

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(Boston Division)**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 05-CV-10983 (NMG)
)	
v.)	
)	
STEVEN E. NOTHERN,)	
)	
Defendant.)	

**U.S. SECURITIES AND EXCHANGE COMMISSION’S MOTION FOR LEAVE
TO FILE MEMORANDUM AND SUPPORTING DECLARATION**

Pursuant to Local Rule 7.1(b)(3), plaintiff U.S. Securities and Exchange Commission (“SEC” or “Commission”) hereby moves for leave to file the attached memorandum of law and supporting declaration of John J. Rossetti Jr. in response to defendant Steven E. Nothern’s Objections to Magistrate Judge Sorokin’s January 24, 2007 discovery Order, (Docket # 65). In his Order (Docket # 63), Magistrate Judge Sorokin denied Nothern’s renewed motion to compel the SEC to produce documents from other government agencies, (Docket # 44). Magistrate Judge Sorokin also denied Nothern’s motion for an Order requiring the SEC to show cause why this action should not be dismissed for the United States Department of Treasury’s (“Treasury”) refusal to allow Nothern to depose five additional Treasury employees, (Docket # 49). The SEC seeks to file a response to Nothern’s Objections to address his false assertion that Magistrate Judge Sorokin’s Order contains clearly erroneous findings of fact and legal conclusions that are contrary to law.

On February 20, 2007, counsel for the SEC conferred by telephone with counsel for Nothern regarding the subject of this motion. Nothern consents to the SEC's motion for leave to file the attached memorandum and supporting declaration.

Dated: February 21, 2007

Respectfully Submitted,

/s/ Erica Y. Williams
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CERTIFICATION PURSUANT TO LOCAL RULES 7.1(a)(2) AND 37.1

I, Erica Y. Williams, hereby certify that on February 20, 2007, I conferred with counsel for Nothern and attempted in good faith to resolve or narrow the issues raised in the present motion.

/s/ Erica Y. Williams

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STEVEN E. NOTHERN,)	
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**U.S. SECURITIES AND EXCHANGE COMMISSION'S RESPONSE
TO DEFENDANT STEVEN E. NOTHERN'S
OBJECTIONS TO MAGISTRATE JUDGE'S ORDER ON DEFENDANT'S RENEWED
MOTION TO COMPEL AND MOTION FOR AN ORDER TO SHOW CAUSE**

TABLE OF CONTENTS

INTRODUCTION	1
STANDARD OF REVIEW	2
PROCEDURAL HISTORY	2
FACTUAL BACKGROUND	4
ARGUMENT	9
A. The Law Does Not Require The SEC To Obtain And Produce Documents Of Other Government Departments Nor Does It Require The SEC To Produce Employees of Other Government Departments For Testimony In Response To Nothern's Discovery Requests	9
B. Nothern's Due Process Argument Must Be Rejected Because He Has Failed To Take Advantage Of Established Procedures To Obtain The Discovery He Seeks	14
C. Magistrate Judge Sorokin Correctly Found That The Evidence Nothern Seeks Is "Not As Central In Its Importance" To This Case.....	16
D. Nothern's Claim That The SEC Has Engaged In Action That Warrants Dismissal Of This Case Is Baseless And Should Be Rejected.....	17
CONCLUSION.....	20

TABLE OF AUTHORITIES

FEDERAL CASES

<i>In re Air Crash at Dallas/Forth Worth Airport on Aug. 2, 1985</i> , 117 F.R.D. 392 (N.D. Texas 1987).....	12
<i>Angulo-Alvarez v. Aponte de la Torre</i> , 170 F.3d 246 (1st Cir. 1999).....	18
<i>Anthony v. Abbott Laboratories</i> , 106 F.R.D. 461 (D.R.I. 1985)	2
<i>Dubin v. E.F. Hutton Group Inc.</i> , 125 F.R.D. 372 (S.D.N.Y. 1989).....	2, 17
<i>Ghana Supply Commission v. New England Power Co.</i> , 83 F.R.D. 586 (D. Mass. 1979).....	12, 13
<i>Harvey Aluminum, Inc. v. NLRB</i> , 335 F.2d 749 (9th Cir. 1964).....	12, 16
<i>Houston Business Journal, Inc. v. Office of Comptroller of Currency, U.S. Dept. of Treasury</i> , 86 F.3d 1208 (D.C. Cir. 1996)	15
<i>Jencks v. Unite States</i> , 353 U.S. 657 (1957).....	13
<i>Marx v. Kelly, Hart & Hallman, P.C.</i> , 929 F.2d 8 (1st Cir. 1991)	18
<i>National Hockey League v. Metropolitan Hockey Club Inc.</i> , 427 U.S. 639 (1976)	19
<i>SEC v. Biopure</i> , No. 05-00506, 2006 WL 2789002 (D.D.C. Jan. 20, 2006).....	12
<i>SEC v. Selden</i> , No. 05-0476 (RMU), 2006 WL 2374796 (D.D.C. Aug. 16, 2006).....	12
<i>Serro-Lugo v. Consortium-Las Marias</i> , 271 F.3d 5 (1st Cir. 2001)	18
<i>Tower Ventures Inc. v. City of Westfield</i> , 296 F.3d 43 (1st Cir. 2002).....	18, 19
<i>United States v. American Tel. & Tel. Co.</i> , 461 F. Supp. 1314 (D.D.C. 1978)	9, 10, 11, 13, 20
<i>United States ex rel. Touhy v. Ragen</i> , 340 U.S. 462 (1951)	3
<i>United States v. Davis</i> , 140 F.R.D. 261 (D.R.I. 1992).....	12
<i>United States v. Cruz Jimenez</i> , 894 F.2d 1 (1st Cir. 1990)	2
<i>United States v. Garcia</i> , 983 F.2d 1160 (1st Cir. 1993)	2

<i>United States v. Gioia</i> , 853 F. Supp. 21 (D. Mass. 1994).....	2
<i>United States v. United States Gypsum Co.</i> , 333 U.S. 364 (1948)	2
<i>Young v. Gordon</i> , 330 F.3d 76 (1st Cir. 2003)	18

FEDERAL STATUTES

FEDERAL RULES OF CIVIL PROCEDURE

Rule 26(a).....	2
Rule 34	2, 10-14
Rule 45	14, 15, 17
Rule 72	2

OTHER AUTHORITIES

31 C.F.R. §§ 1.8 - 1.12.....	17
28 U.S.C. § 636(b)(1)(A).....	2
29 U.S.C.A. § 161	13

INTRODUCTION

The Securities and Exchange Commission (“SEC” or the “Commission”) respectfully submits this response to Defendant Steven E. Nothern’s Objections to Magistrate Judge Sorokin’s January 24, 2007 discovery Order (Docket # 63) denying his renewed motion to compel the SEC to produce documents from other government agencies¹, which the SEC does not possess or control, and his motion for an order to show cause why the SEC’s complaint should not be dismissed for the Department of Treasury’s decision to deny his request to take the depositions of five current and former Treasury Department employees.² Magistrate Judge Sorokin found that the SEC, an independent regulatory agency of the government, does not control Executive Branch departments and held that the SEC was not required under Rule 34 of the Federal Rules of Civil Procedure to produce documents the United States Department of Treasury (“Treasury”) and the United States Department of Justice (“Justice”) as requested by Nothern in his renewed motion to compel. Magistrate Judge Sorokin also rejected Nothern’s claim that the SEC should be held responsible for Treasury’s determination under its *Touhy* regulations to deny Nothern’s requests for the depositions of five Treasury employees, including Treasury’s former general counsel. In denying Nothern’s motions, Magistrate Judge Sorokin correctly noted that Nothern has a full array of valid procedures available to obtain the discovery that he seeks directly from Treasury and Justice, of which he has not taken full advantage. Contrary to the claims raised in Nothern’s Objection, Magistrate Judge Sorokin’s Order was neither clearly erroneous nor contrary to law. Nothern’s Objection lacks merit, and his request that this Court set aside Magistrate Judge Sorokin’s Order should be denied.

¹ Defendant’s Renewed Motion To Compel Production of Documents (Docket # 44) shall be referred to herein as “renewed motion to compel” and Defendant’s Motion For Order To Show Cause (Docket # 49) shall be referred to herein as “motion to show cause.”

² All references to Defendant’s Objections To Magistrate Judge’s Order On Defendant’s Renewed Motion To Compel And Motion For An Order To Show Cause (Docket # 65) will be referred to herein as “Nothern’s Objection” or “Objection.”

STANDARD OF REVIEW

A magistrate judge may hear and determine pretrial motions that are not dispositive of a claim or defense, including discovery motions. *See* Fed. R. Civ. P. 72, 28 U.S.C. § 636(b)(1)(A), Local Magistrate Rule 2(a). A magistrate's resolution in pretrial discovery disputes is entitled to substantial deference. *Dubin v. E.F. Hutton Group Inc.*, 125 F.R.D. 372, 373 (S.D.N.Y. 1989), *see also Anthony v. Abbott Lab.*, 106 F.R.D. 461, 463 (D.R.I. 1985) (“[I]f the magistrate system is to work effectively, magistrates must be given some latitude to exercise judgment and discretion. The district courts should be slow to interfere in everyday decisionmaking [sic], lest the floodgates be rent asunder and the efficacy of the system undermined.”). Indeed an order issued by a magistrate judge can be set aside by the district court only if it is “clearly erroneous or contrary to law.” *U.S. v. Garcia*, 983 F.2d 1160, 1166 (1st Cir. 1993) (citing 28 U.S.C. § 636(b)(1)(A)). The phrase “clearly erroneous” refers to the magistrate judge’s factual findings. *U.S. v. Gioia*, 853 F. Supp. 21, 26 (D. Mass. 1994). A finding is clearly erroneous when a court upon review of the entire evidence “is left with the definite and firm conviction that a mistake has been committed.” *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364, 397 (1948). However, if two interpretations of evidence are permissible then a court’s choice of one cannot be clearly erroneous. *U.S. v. Cruz Jimenez*, 894 F.2d 1, 7 (1st Cir. 1990).

Magistrate Judge Sorokin did not make any clearly erroneous findings of fact or judgments that are contrary to law in his Order denying Nothern’s renewed motion to compel and motion for order to show cause. He properly denied both motions finding that the SEC made a “powerful” argument that “the SEC neither possesses nor controls documents held by [Executive Branch] agencies within the meaning of Fed. R. Civ. P. 34, and that it does not exert control over the Treasury Department’s review of subpoenas seeking testimony from Treasury employees.” Docket # 63 at 2, 9.

PROCEDURAL HISTORY

In November 2005, as part of its initial disclosures under Fed. R. Civ. P. 26(a), the SEC provided Nothern with a copy of *all* of the non-privileged documents contained in its

investigative file related to this case. Despite the fact that the SEC had already produced all of the non-privileged documents in its possession, custody and control, on February 17, 2006, Nothern moved to compel the SEC to produce documents from other government agencies, including Justice, Treasury and the Commodity Futures Trading Commission (“CFTC”) in response to his sixty-six requests for production of documents. In an effort to resolve Nothern’s motion to compel without further Court intervention, during a hearing on June 14, 2006, the SEC agreed to ask Justice, Treasury and the CFTC to voluntarily produce documents to both parties in this case in response to narrowed document requests drafted by Nothern.³ As a result of the SEC’s actions, the parties received hundreds of pages of production from the CFTC and Treasury, and written confirmation from Justice that it did not possess any non-privileged documents responsive to Nothern’s requests. In addition, on December 19, 2006, Treasury provided the parties with a log of documents it was withholding from its production on the grounds of privilege. Docket # 60, Exh. 2. Apparently dissatisfied with the results of the voluntary production from Treasury and Justice, on October 30, 2006 Nothern renewed his motion to compel the SEC to produce documents in the possession of those two Executive Branch departments.

While the parties worked to resolve their disputes regarding the production of documents, they proceeded to take the depositions of potential witnesses. Nothern sought and received permission from Treasury to depose nine current and former Treasury employees, pursuant to regulations promulgated by Treasury pursuant to authority provided by the Supreme Court in *U.S. ex rel. Touhy v. Ragen*, 340 U.S. 462, 468 (1951) (hereinafter referred to as “*Touhy* regulations”).⁴ The more Treasury employees Nothern deposed, the more employees he sought

³ The SEC first raised this offer of compromise with Nothern before he filed his motion to compel, but he rejected it. *See* Docket #30, Exh. V.

⁴ These employees include: Salvatore Antonio Fratto, Frances Anderson, Elizabeth Holahan Schmutz, Roger Anderson, Peter Fisher, Brian Roseboro, Paul Malvey, Jill Ousley and Lula Tyler. In addition, Treasury approved the SEC’s request to depose one former Treasury employee, Steven Vagle, who counsel for Nothern also examined.

to depose. Although Treasury did not play a major role in the facts that give rise to this insider trading case, Nothern increased the number of Treasury employees he wanted to depose to fourteen. Treasury denied Nothern's request to depose five of fourteen Treasury witnesses. The five Treasury witnesses Nothern still seeks to depose include Elnora Bowser, Jill Cetina, Michele Davis, Steve Berardi and former Treasury General Counsel David Aufhauser. Treasury denied Nothern's *Touhy* requests to depose these five additional witnesses on the grounds that the depositions were unnecessary and unduly burdensome, and that the information sought from the witnesses was available from other sources. *See* Docket # 51, Exhs. B, J, N; Docket # 53, Exhs. B, C. Although the SEC was not involved in Treasury's decision to deny Nothern's request for these five additional depositions, on November 17, 2006, Nothern moved for an Order requiring the SEC to show cause why its case should not be dismissed based on Treasury's decision. Additionally, on January 3, 2004, Nothern filed a response (Docket # 62) to the SEC's Notice to the Court on the status of Treasury's privilege log (Docket # 60) in which he challenged Treasury's privilege claims. Because the SEC did not participate in Treasury's privilege review – Treasury also denied the SEC access to its privileged documents – and because the SEC believed that Nothern's response should have been directed to Treasury directly, it declined to file a written response to Nothern's privilege challenge.

FACTUAL BACKGROUND

Although his renewed motion to compel and motion to show cause present a legal not a factual issue, Nothern uses several pages of his Objection to set forth his inaccurate and twisted recitation of the facts. He then uses these supposed "facts" to argue that the Court should force the SEC to produce documents and witnesses from Executive Branch departments, which it does not control, on the grounds that the documents sought are "critical" to his defense. The following facts, upon which the SEC bases its claims, show that the discovery that Nothern seeks from Treasury and Justice is not only not "central in its importance" to this case, but is arguably irrelevant.

On October 31, 2001, Peter J. Davis Jr., a Washington, D.C.-based consultant, hired by Massachusetts Financial Services Company (“MFS”), attended a refunding press conference at Treasury. Treasury subjected the information released at this conference to an embargo until a specified time.⁵ The October 31, 2001 conference was not the first refunding conference attended by Davis. Indeed, he had been attending Treasury refunding conferences for several years “pursuant to an agreement that he had with the Treasury Department that he would abide by the embargo and keep all information disseminated there confidential until the embargo expired.” Docket # 33, Exh. D at 19. Besides Davis, who had an express agreement with Treasury, attendance at the conference was limited to members of the press and select government employees, all of whom were required to be put on a list and cleared into the Treasury building through secret service. *See* February 2007 Rossetti Decl. Exh. A (Fratto dep.) at 156:3-157:12.

“[A]t the beginning of the [October 31] press conference, before the question and answer period, and at the conclusion” of the conference, a Treasury Public Affairs Specialist announced that the information provided at the conference would be embargoed until 10 a.m.⁶ *See* Docket # 33, Exh. A at 2. Despite his agreement with Treasury, and the directives he was given by a Treasury employee during the conference to abide by the embargo, as soon as the conference ended, Davis left the Treasury building, and once outside used his cell phone to call a number of

⁵ Prior to October 31, 2001, Treasury had been using an embargo procedure that did not involve a lockdown to protect the confidentiality of information released at its quarterly refunding conferences. *See* February 2007 Rossetti Decl. Exh. A (Fratto dep.) at 62:4-63:3. Treasury officials testified that they were not aware of any time in the thirty years prior to October 31, 2001 where an attendee at any of Treasury’s press conferences had intentionally violated an embargo. *See id.* Exh. A (Fratto dep.) at 62:14-63:2, 111:20-112:4; Exh. B (Malvey dep.) at 120:15-121:5, 122:9-16.

⁶ Employees in Treasury’s Office of Public Affairs decided to impose a 10 a.m. embargo for the Treasury refunding conference on October 31, 2001 after consultation with Peter Fisher, Treasury Under Secretary for Domestic Finance. *See* February 2007 Rossetti Decl. Exh. A (Fratto dep.) at 130:22-138:12. Contrary to Nothern’s claims, Mr. Fisher testified that he felt the decision to impose an embargo was “as good a decision” as the Press Office could make, and that he had no regrets about the decision. *See* February 2007 Rossetti Decl. Exh. C (Fisher dep.) at 177:8-179:1.

clients, including Nothern, to notify them about Treasury's decision to cancel the 30-year bond. *See* Docket # 33, Exh. D at 21.

The evidence that the SEC has gathered in this case proves that Davis called Nothern at approximately 9:38 a.m. on October 31 and left a voice-mail message. *See* Docket # 33, Exh. F. Nothern immediately retrieved and listened to the message in which Davis informed Nothern that "Peter Fisher had indicated to Pete Davis that they'd be canceling the long bond and that there would be a press release because it was embargoed until 10 o'clock." *See* Docket # 33, Exh. G at 111-112. Nothern has admitted that he understood that Peter Fisher was a Treasury official in the debt finance area who would have had access to market-sensitive information such as Treasury's decision to suspend or cancel the 30-year bond. *Id.* at 116-117. Nothern has also admitted that when he received Davis' voicemail he was aware of the meaning of the term embargo as it applied to information from government agencies. Docket # 33, Exh. A

Immediately after retrieving the voicemail message, Nothern relayed the material nonpublic information that he had received from Davis regarding Treasury's cancellation of the 30-year bond to three other MFS portfolio managers. Docket # 33, Exh. G at 125-130. When conveying this information Nothern conveniently neglected to tell the other portfolio managers that the information was embargoed, that Davis advised Nothern he had gotten the information from Peter Fisher, or that a Treasury planned to issue a press release announcing the cancellation of the bond at 10 a.m. *See* February 2007 Rossetti Decl. Exh. D (Kurinsky dep.) at 101:24-102:23, 107:18-108:2, 115:22-116:25; Exh. E (Smith dep.) at 138:9-139:18, 141:14-143:1, 202:8-203:10; and Exh. F (Kennedy dep.) at 61:15-63:3, 81:18 84:7. Nothern then placed an order to purchase \$25 million in par value of the 30-year bond for the portfolios that he managed.

⁷ Docket # 33, Exh. G at 125. Based on the limited information that they received from

⁷ Although Nothern claims that he had heard a rumor about the cancellation of the bond on the morning of October 31, prior to receiving Davis' voicemail, and that he intended to purchase 30-year bonds for the portfolios he managed when he arrived at work that day, he took no action to purchase the bonds until after he received the material nonpublic information about the bond's

Nothern, the three other portfolio managers also placed orders to purchase 30-year bonds for the portfolios they managed. *See* Docket # 33, Exh. H at 135-136, Exh. I at 76-77, and Exh. J at 79-82. In total, the amount of bonds purchased by Northern and the three other portfolio managers equaled \$65 million in par value. *See* Docket # 33, Exh. G at 128. Records from Merrill Lynch, the broker executing the trade, indicate that Northern and the three other portfolio managers authorized an MFS trader to place the order for the \$65 million in bonds, and that the trader verbally confirmed the telephone order for the bonds with Merrill Lynch prior to 9:42 a.m. *See* Docket # 33, Exh. K. At 9:43 a.m., Treasury inadvertently posted a press release on its website announcing that it was canceling issuance of the 30-year bond. *See* Docket # 30, Exh. L.⁸ The price and volume data on the 30-year bond from October 31, 2001, testimony from numerous witnesses, and many of the documents produced in this litigation, show that the information that Northern used to trade was nonpublic at the time he placed his trade order,⁹ and did not become

cancellation from Davis. *See* February 2007 Rossetti Decl., Exh. G (Northern Jan. 30, 2007 dep.) at 163:7-165:15, 176:15-18.

⁸ Merrill Lynch, the counterparty to Northern's purchase order of \$65 million par value 30-year bonds, utilized a Trade Order Management System ("TOMS") maintained by Bloomberg. According to Bloomberg's records, the Merrill Lynch bond trader first entered the trade into TOMS at 9:42:02. February 2007 Rossetti Decl. Exh. H. According to Galen Criqui, the Merrill Lynch bond trader for this transaction, after he verbally confirmed that the trade was "done", or executed, he "soon thereafter, but not immediately" "slated" or entered the trade information into TOMS. *See* February 2007 Rossetti Decl. Exh. I (Criqui dep.) at 184:2-187:23. Thus, Northern's trade order had to have been placed sometime prior to 9:42:02. Evidence developed during discovery confirms that the time of the trade recorded in the TOMS, 9:42:02, and the time recorded on Treasury's production server, 9:43:28, indicating when the October 31 press release was posted to the Treasury website, were both synchronized via Network Time Protocol, an ubiquitous time synchronization computer program, to atomic clocks maintained by the United States Naval Observatory and the National Institute of Standards and Time. *See* February 2007 Rossetti Decl. Exh. J (Verizon Business (Anne Wilson) dep.) at 84:9-85:14; Exh. K (Bloomberg L.P. (Darin Langone) dep.) at 31:2-19. As a practical matter, Treasury's press release could not be viewed by the public on its website prior to the posting on its production server at 9:43:28. February 2007 Rossetti Decl. Exh. J (Verizon Business (Anne Wilson) dep.) at 81:12-22, 180:17-181:10, 199:20-200:11.

⁹ Contrary to Northern's assertions, there is no evidence that Treasury's decision to cancel the 30-year bond became public prior to the time that Northern traded in the bond. Northern maintains

public until sometime close to 10 a.m. after it was released on the news wires.¹⁰ See Docket # 30, Exh. K.

On September 3, 2003, Davis pleaded guilty to criminal charges resulting from the actions that he took to disclose Treasury's decision to cancel the 30-year bond to clients during the embargo period.¹¹ Davis has admitted that he knew that "the information disseminated in the press conference was embargoed by Treasury officials, such that it could not be published or divulged before a specific time shortly after the press conference concluded." Docket # 33, Exh. D at 19. He has also admitted that he violated his duty to Treasury to keep the information that he heard at the Treasury's October 31, 2001 refunding press conference confidential until the

that Treasury leaked the information prior to October 31 to a trader at Lehman Brothers, a European central bank, and White House officials. Not surprisingly, Nothern has never attempted to take the testimony of any representatives from Lehman Brothers, European central banks or the White House to obtain admissible evidence to corroborate his groundless assertion of leaks. The only source that Nothern references to support these baseless allegations is the summary of an interview with Treasury employee Jill Cetina. Far from corroborating Nothern's claim of leaks, Ms. Cetina stated that she had heard "speculation" from a bond strategist "a week or two" prior to the announcement and that she thought the strategist was "going out on a limb with that type of speculation." February 2007 Rossetti Decl Exh. L at 2. Speculation in the market is not out of the ordinary. Numerous witnesses in this case, including Nothern, have testified that rumors of the possible cancellation of the 30-year bond had been circulating for years. See February 2007 Rossetti Decl. Exh. G (Nothern dep.) at 168:10-170:21, Exh. D (Kurinsky dep.) at 114:3-115:6, Exh. F (Kennedy dep.) at 77:18:79:15, and Exh. E (Smith dep.) at 143:18-144:1, 165:9-166:14.

¹⁰ Nothern's claim that Brian Collins, a reporter from *National Mortgage News*, leaked information about the cancellation during the embargo period is untrue. Mr. Collins testified that he did not disclose the information to anyone in the public prior to approximately 9:50 a.m. on October 31 – long after Nothern traded, after it was placed on Treasury's website, and after Nothern claims the information was publicly released by Reuter's news service. February 2007 Rossetti Decl. Exh. M (Collins dep.) at 67:9-68:2.

¹¹ Davis pleaded guilty in the U.S. District Court for the Southern District of New York to a three-count criminal information charging him with: (1) Conspiracy to Defraud the United States, Convert Property of the United States, Commit Fraud in Connection with the Sale of Securities, and Wire Fraud; (2) Conversion of Property of the United States; and (3) Securities Fraud. See Docket # 33, Exh. D at 22-24. On March 18, 2005, the Court sentenced Davis to two years probation and a \$30,000 fine. See Docket # 33, Exh. E at 14.

embargo expired by calling clients that he thought might have an interest in the information so that they could “make significant moves in advance of the market responding to the official public release,” which is exactly what Nothern did in this case. *Id.* at 21.

Now Nothern is attempting to impair the SEC’s ability to litigate its securities fraud claims against him by requiring the SEC to produce documents and witnesses from Executive Branch departments, which the SEC does not control. Magistrate Judge Sorokin properly denied Nothern’s motions. His Order should be upheld.

ARGUMENT

A. The Law Does Not Require The SEC To Obtain And Produce Documents Of Other Government Departments Nor Does It Require The SEC To Produce Employees of Other Government Departments For Testimony In Response To Nothern’s Discovery Requests.

This case was filed on behalf of the SEC, not the entire United States government.¹² As Magistrate Judge Sorokin noted, it is undisputed that the SEC is comprised of five Commissioners who are appointed by the President for fixed terms which do not lapse at the same time, and are not subject to removal or discipline by the President. Docket # 63 at 10. Unlike Executive Branch departments, like Treasury and Justice, the SEC is an independent regulatory agency of the government, and is essentially free from the control of the government’s Executive Branch. *See U.S. v. American Tel. & Tel. Co.*, 461 F. Supp. 1314, 1335-1336 (D.D.C. 1978) (“*AT&T*”).

The proposition upon which Nothern’s renewed motion to compel and his motion to show cause are based – that Executive Branch departments of the federal government become

¹² Contrary to Nothern’s allegations, the SEC’s Division of Enforcement Staff (“Staff”) conducted the SEC’s investigation of this matter independent of any limited investigation being conducted by Treasury and Justice. *See* Docket # 33, ¶ 2. Similarly, the decision to bring this action, and all other SEC actions, that resulted from the SEC’s investigation into trading in the 30-year bond rested solely on the SEC. Nothern’s claim that the SEC brought this action for any reason other than to enforce the federal securities laws, especially his ridiculous claim that this action was filed to “deflect[] critical attention” away from Treasury, should not be credited. Objection at 13.

plaintiffs to an action filed by the SEC – is contrary to law, and raises serious constitutional, and separation of powers, concerns. As Magistrate Judge Sorokin observed, the only case cited by the parties that squarely addresses the issue of whether an independent government agency, such as the SEC, can be compelled to produce documents held in the possession of Executive Branch departments under Rule 34 of the Fed. R. Civ. P. is *AT&T*, which rejected the very legal arguments Nothern asserts in his motions and in his Objection.¹³

Justice filed *AT&T* on behalf of the United States. Although the United States was listed as the plaintiff in the action, the Court found that the plaintiff did not include all agencies and departments of the United States government and denied the defendants' motion to compel Justice to produce document contained in the files of the Federal Communications Commission ("FCC") and other independent regulatory agencies. Specifically, the court held that "there is no basis for holding that a quasi-legislative agency, which the law necessarily regards as an independent body created to execute independent responsibilities, becomes a 'plaintiff' when the Department of Justice chooses to file a lawsuit on behalf of the United States." *Id.* at 1335. The court noted that while Justice and other the departments of the Executive Branch could be considered to be plaintiffs because of the "peculiar facts" of the case "which involve[d] many departments and their evidence," independent regulatory agencies could not. *Id.* at 1334-1335. The court also found that "the plain fact is that a party cannot produce that which it does not have . . . [and] in a very real, practical sense, [an independent regulatory agency's] documents are not in the control of either the Department of Justice or the Executive Branch." *Id.* at 1335. Moreover, the court concluded that to hold an independent regulatory agency of the government to be a plaintiff in the case for purposes of Rule 34 "would not only contradict over forty years of legal history, but would effectively leave the conduct of this lawsuit, and perhaps of other actions brought by the government vulnerable to a virtual veto by one or more independent regulatory

¹³ In *AT&T* the court noted that "there is a paucity of authority on this issue in the area of civil litigation, and there certainly has been no instance of discovery being sought or required on as broad a scale, involving as many departments of government as in this case." 461 F. Supp. at 1333.

agencies.” *Id.* at 1336. Although *AT&T* involved a motion to compel the production of documents from government agencies, its holding is equally applicable to the production of testimony.

In his Objection, Nothern attempts, unsuccessfully, to spin the holding in *AT&T* in his favor by claiming that it allows the Court to ignore the independent status of the SEC, the agency that filed this lawsuit, and ignore the fact that the SEC cannot control Executive Branch departments, and nonetheless find that Treasury and Justice are plaintiffs in this case because they are subject to the control of the President. Objection at 17. This flawed interpretation of *AT&T* must be rejected. Nothern bases his reading of *AT&T* on his erroneous assertion that the Executive Branch is “the branch of the government whose interests the SEC is advancing with this lawsuit.” Objection at 17. The SEC is an independent agency of the government charged with enforcing the federal securities laws. To the extent the SEC advances any interests, it is the interests of investors. The SEC is not controlled by the President, or any other Executive Branch department or agency. Indeed, as an independent regulatory agency, the SEC was “intentionally created to be somewhat apart from the government, in general, and from the White House in particular.” *Id.* at 1335.

The holding in *AT&T* makes clear that independent government agencies and Executive Branch departments are separate and distinct entities which do not control each other’s documents. Docket # 63 at 9-10. The focus of the Court in *AT&T* was not the status of the agencies the defendants were trying to compel, but the status of those agencies in relation to the named plaintiff, Justice. The Court reasoned that because Justice had filed the action on behalf of the Executive Branch, it could therefore find that other Executive Branch departments were plaintiffs to the action for purposes of Rule 34. The Court, however, determined that the defendants could not obtain discovery from the FCC, an independent agency, pursuant to Rule 34 because it was not a plaintiff to the action. Magistrate Judge Sorokin properly found that “[t]hough some circumstances distinguish this case from *AT&T*, those distinctions are not

material” and correctly concluded that the SEC does not control Treasury and Justice. Docket # 63 at 10.

The other case that has addressed the issue of whether an Executive Branch agency can be found to be a plaintiff for purposes of discovery in an action filed by the SEC supports the SEC’s position. In *SEC v. Biopure*, No. 05-00506, 2006 WL 2789002, at *4 (D.D.C. Jan. 20, 2006), the U.S. District Court for the District of Columbia “found no support for Biopure’s proposition that because the SEC [Government] is a party, then other branches of Government, such as the FDA [an Executive Branch agency] should also be treated as a party.” *Id.* at, * 4.¹⁴ See generally *Sec v. Selden*, No. 05-0476 (RMU), 2006 WL 2374796, at *1-2 (D.D.C. Aug. 16, 2006) (involving an SEC enforcement action filed in the District of Massachusetts in which the defendant who was seeking documents and testimony from the FDA during discovery served Rule 45 subpoenas on the FDA rather than pursuing the discovery through the plaintiff SEC).¹⁵

In his Objection, Nothern also relies on the holdings in *Harvey Aluminum Inc. v. NLRB*, 335 F.2d 749 (9th Cir. 1964) (“*Harvey*”) and *Ghana Supply Commission v. New England Power Co.*, 83 F.R.D. 586 (D. Mass. 1979) (“*Ghana*”), but neither case supports his argument that the SEC is obligated to produce documents and witnesses from Executive Branch departments in response to his discovery requests.

Surprisingly, Nothern admits that *Harvey* does not serve as authority for the SEC’s duty to produce documents from other government agencies. Objection at 16. He correctly notes that

¹⁴ The Court also did not accept the defense’s argument, which is similar to arguments raised by Nothern in this case, that the FDA should be considered a plaintiff because it had provided “substantial assistance” to the SEC. *Id.* at, *4.

¹⁵ See e.g. *U.S. v. Davis*, 140 F.R.D. 261, 263 (D.R.I. 1992) (rejecting defendant’s claim that a subcommittee of the U.S. House of Representatives became plaintiffs to the action for purposes of Rule 34 in an action filed by Justice on behalf of the United States); *In re Air Crash at Dallas/Forth Worth Airport on Aug. 2, 1985*, 117 F.R.D. 392, 393 (N.D. Texas 1987) (denying a motion to compel the United States to produce documents contained in the files of the National Transportation Safety Board in response to a Rule 34 document request on the grounds that the NTSB functions as “an entirely autonomous entity, not subject to any other executive agency.”)

the SEC's obligation arises from Rule 34 of the Fed. R. Civ. P., which only requires parties to produce documents within their possession, custody or control. *Id.* Where Nothern misses the mark in his analysis of the *Harvey* opinion is when he claims that because the Ninth Circuit in *Harvey* required the NLRB to produce witness statements from Executive Branch agencies in an adjudicatory hearing before the Board, based on the principles underlying *Jencks v. United States*, 353 U.S. 657 (1957), the SEC in this federal court action should be required to obtain and produce not only witness statements, but *all documents* from Executive Branch departments that are responsive to his sixty-six document requests.

As Magistrate Judge Sorokin correctly concluded, “[t]his case is materially different from *Harvey*.” Docket # 63 at 11. In *Harvey* the Ninth Circuit based its opinion in part on a statute, 29 U.S.C.A. § 161 (b), that provided for the Board to obtain documents from other government agencies upon request by the Board at the direction of the President. No such statute exists to allow the SEC to obtain the documents that Nothern seeks from Treasury and Justice.¹⁶ Furthermore, in stark contrast to the facts of *Harvey*, in this case Nothern is not seeking production of witness statements that are central to this case, which he cannot obtain through any other means. He is seeking to compel the SEC, to obtain and produce documents from Executive Branch departments in response to sixty-six Rule 34 document requests, which the SEC does not possess or control. The Court in *AT&T* distinguished the holding in *Harvey* for this very reason finding that the Ninth Circuit “was essentially concerned with Jencks Act statements in the possession of executive departments.” 461 F. Supp. at 1336, n. 63.

While counsel for Nothern failed to even mention *Ghana* during oral argument on the motions at issue, he now criticizes Magistrate Judge Sorokin's Order for failing to discuss the

¹⁶ Nothern contends that Treasury's and Justices' *Touhy* regulations do not apply to the SEC. Docket # 29 at 14, Objection at 14. Nothern's contention is incorrect. Although the *Touhy* regulations provide a mechanism for other government agencies or government officers acting in their “official capacity” to request information without complying with all of the *Touhy* regulations, as Magistrate Judge Sorokin found, they do not confer any legal obligation on the part of Treasury or Justice to release the documents or witnesses to the SEC. Docket # 63 at 13.

Ghana decision. Magistrate Judge Sorokin did not need to discuss the holding in *Ghana* in his Order denying Nothern's motions because *Ghana* has no bearing whatsoever on this case. In *Ghana* the Court did not address, let alone decide, the issue of whether an independent regulatory agency is obligated under Rule 34 to produce documents from other government agencies. The Court found that when the entire Republic of Ghana filed suit through one of its agencies, the Ghana Supply Commission, pursuant to Massachusetts state law, it waived the right to claim governmental privilege except as to documents that contained "military or diplomatic secrets." *Id.* at 593. Accordingly, the Court held that the Republic of Ghana was required to make available all information relevant to the defense that was in the possession, custody or control of the Ghanaian government and could not allow particular agencies to withhold documents "solely on the claims of intragovernmental or executive privilege." *Id.* at 595.

This case differs materially from *Ghana*. This action was filed on behalf of the SEC, an independent regulatory agency, not the entire United States government. The SEC is not objecting to producing documents from Executive Branch departments on the basis of government privilege – its objection rests on the fact that the documents Nothern seeks are outside of the SEC's possession, custody and control.

B. Nothern's Due Process Argument Must Be Rejected Because He Has Failed To Take Advantage Of Established Procedures To Obtain The Discovery He Seeks.

This is not a case where Nothern has been denied, or risks being denied, due process. Magistrate Judge Sorokin correctly noted that "Nothern retains the full range of discovery options available to him pursuant to Rule 45 [of the Federal Rules of Civil Procedure] (which controls discovery directed to non-parties) and which, as Nothern concedes, now include the ability to serve Rule 45 subpoenas upon the government itself." Docket #63 at 11. To date Nothern has not served a single Rule 45 subpoena on either Treasury or Justice, nor has he served them with any requests for documents pursuant to their *Touhy* regulations. While Nothern served both Treasury and Justice with FOIA requests, he has not utilized all of the procedures available

to challenge the denial of his requests, or those agencies' privilege assertions, which includes filing a FOIA lawsuit in United States District Court. Further, although Nothern claims that he is willing to file an action under the Administrative Procedures Act, to challenge Treasury's denial of his request to depose the five additional Treasury employees at issue in his motion to show cause, he has failed to do so. *See Houston Business Journal, Inc. v. Office of Comptroller of Currency, U.S. Dept. of Treasury*, 86 F.3d 1208, 1212 n.4 (D.C. Cir. 1996).

Nothern's attempts to justify his failure to pursue discovery through Rule 45 and other alternatives are unpersuasive. Nothern claims that this Court should set aside Magistrate Judge Sorokin's Order and make the unprecedented finding that Treasury and Justice became plaintiffs to this action when it was filed by the SEC because it may be "cumbersome and time-consuming" for him to obtain documents from these Executive Branch departments through established alternative means. Objection at 19-20. As stated above, Nothern's claims that the Executive Branch is a party to this action, or that the SEC controls the Executive Branch and its departments are not supported by law. Moreover, any logistical problems or delay Nothern faces in trying to compel Executive Branch departments to produce documents, the SEC also faces. The SEC does not control Treasury or Justice, has no access to their buildings or files, and cannot, contrary to Nothern's naïve and unsupported contention, simply demand and receive documents from these departments. *See* Docket # 63 at 13. If Treasury and Justice refuse to produce requested documents and witnesses to the SEC, it would have to seek court redress as well.

Nothern's reliance on *AT&T* and *Harvey* to support his assertion that that he should not be required to pursue the discovery through Rule 45 subpoenas, FOIA and the APA is misplaced. Just like the defendants in *AT&T* had to use alternative discovery means to obtain documents from the FCC, a non-party independent government agency, Nothern should be required to utilize established procedures to obtain the discovery he is seeking from Treasury and Justice. Additionally, *Harvey* differs from this case in several material respects, not the least of which is that in *Harvey* the defendants attempted to obtain witness statements through motions and

subpoenas duces tecum and failed, thereby leaving, as Magistrate Judge Sorokin correctly found, “no alternative avenue for obtaining the reports.” Docket # 63 at 11. *See also Harvey*, 335 F.2d at 752. Here, Nothern has made little to no attempt to seek discovery through alternative means, choosing instead to spend more than a year trying to force the SEC to produce documents from Executive Branch agencies which it does not have and does not control.

Nothern has limited himself by refusing to take advantage of established procedural methods put in place that would allow him to pursue the discovery he seeks from Treasury and Justice. In doing so, he has unfairly delayed the discovery process in this case and impeded the SEC’s ability to prosecute its claims against him. The Court should counsel no further delay, and uphold Magistrate Judge Sorokin’s Order denying Nothern’s motion to show cause and his renewed motion to compel production of documents from other government agencies.

C. Magistrate Judge Sorokin Correctly Found That The Evidence Nothern Seeks Is “Not As Central In Its Importance” To This Case.

In reaching his legal conclusions in his January 24, 2007 Order, Magistrate Judge Sorokin correctly observed that the discovery that Nothern is seeking is “not as central in its importance to this case,” and that Nothern had already “obtained substantial information concerning the disputed issues” as a result of the SEC’s production and voluntary efforts to help him to obtain voluntary discovery from Treasury, Justice and the CFTC. Docket # 63 at 12. Indeed, Nothern has already taken the depositions of nine Treasury employees and received countless documents related to the very information that he claims is “critical” to his defense, such as: (1) Treasury decision to suspend the 30-year bond, (2) Treasury’s policies and procedures related to embargos, (3) Treasury’s effective use of the embargo procedure on October 31, 2001, (4) Peter Davis’ admission to the October 31, 2001 Treasury refunding conference, (5) the posting of the press release on Treasury’s website at 9:43 a.m. on October 31, 2001. Docket # 53, Exhs. B, C. (containing citations to the depositions of current and former Treasury employees, Salvatore Antonio Fratto, Frances Anderson, Elizabeth Holahan Schmutz, Roger Anderson, Peter Fisher,

Brian Roseboro, Paul Malvey, Jill Ousley and Lula Tyler). Magistrate Judge Sorokin's determination as to the limited importance of the discovery that Nothern seeks from Treasury and Justice is entitled to substantial deference. *Dubin v. E.F. Hutton Group, Inc.*, 125 F.R.D. at 373.

Even if Magistrate Judge Sorokin's factual observation regarding the importance of the discovery sought by Nothern in the motions at issue was erroneous – which it was not – it was but one of several observations he relied on in reaching his decision to deny Nothern's motion to compel and motion to show cause. Nothern's contention that the Magistrate Judge's decision should be set aside because he was not persuaded by Nothern's claim that the information he seeks from Treasury and Justice is of much importance to this case should be rejected. The relative importance of the information that Nothern is seeking to compel the SEC to produce from Treasury and Justice has no bearing on the SEC's ability to control those Executive Branch agencies, their documents, or their decisions to produce their employees for testimony. If Nothern believes the information he is seeking is important, he is free to utilize the established procedures that exist for obtaining that information from Treasury and Justice directly, such as Rule 45, FOIA, the *Touhy* regulations and the APA.

D. Nothern's Claim That The SEC Has Engaged In Action That Warrants Dismissal Of This Case Is Baseless And Should Be Rejected.

In an effort to convince the Court that the SEC should be held responsible for the actions of Executive Branch departments, Nothern spends several pages of his Objection attempting to defend the validity of his challenges to Treasury's and Justice's privilege assertions and his request to depose five additional current and former Treasury employees. The SEC, however, was not involved in any decisions by Treasury or Justice to withhold documents from their productions on the basis of privilege. Like Nothern, the SEC has also been denied access to those privileged materials. While the SEC may agree with Treasury's decision that many of the depositions that Nothern seeks are unnecessary and unduly burdensome, it did not participate in

the decision, and has no ability to overturn it. 31 C.F.R. §§ 1.8 – 1.12.¹⁷ To the extent that Nothern wishes to challenge Treasury's and Justice's privilege assertions and Treasury's application of its own *Touhy* regulations, Magistrate Judge Sorokin properly found that he should apply directly to those departments to do so, rather than going through the SEC. Docket # 63 at 12.

Even if Treasury's denial of Nothern's request for five additional depositions, and the privilege assertions made by Treasury and Justice could be imputed to the SEC – which they cannot - Nothern's claim that Treasury's and Justice's actions warrant an order to show cause, and the possible dismissal of the SEC's lawsuit case is without merit. Dismissal of a plaintiff's action, especially dismissal with prejudice, is typically reserved for cases in which the plaintiff has shown continued deliberate disregard for court orders and procedures, and been forewarned of the consequences of continued non-compliance.¹⁸ Indeed, the First Circuit has found that dismissal of an action with prejudice “is strong medicine, not casually to be dispensed . . .” *Tower Ventures Inc. v. City of Westfield*, 296 F.3d 43, 46 (1st Cir. 2002). Even the cases that Nothern cites in support of his motion to show cause are limited to circumstances in which plaintiffs failed to abide by court discovery orders after receiving warnings of the likely consequences of such action. *See Young v. Gordon*, 330 F.3d 76, 81 (1st Cir. 2003) (upholding

¹⁷ Nothern criticizes the SEC for not asking Treasury to reconsider its denial of his request for depositions. His criticism is misplaced especially in light of the fact that prior to filing his motion to show cause Nothern never sought reconsideration of Treasury's decisions. He can hardly blame the SEC for not taking action that he refused to take himself.

¹⁸ *See Marx v. Kelly, Hart & Hallman, P.C.*, 929 F.2d 8, 10 (1st Cir. 1991)(upholding dismissal of an action after the plaintiff evidenced a deliberate pattern of delay and disregard for court orders and finding that “dismissal with prejudice is a harsh sanction which runs counter to our strong policy favoring the disposition of cases on the merits.”)(citations and internal quotations omitted); *Angulo-Alvarez v. Aponte de la Torre*, 170 F.3d 246, 252 (1st Cir. 1999)(finding that a court may dismiss an action where “a noncompliant litigant has manifested disregard for orders of the court and been suitably forewarned of the consequences of non-compliance”); *Serro-Lugo v. Consortium-Las Marias*, 271 F.3d 5, 6 (1st Cir. 2001)(holding that the district court acted within its discretion in dismissing an action after the plaintiff repeatedly violated court orders and had been warned of the consequence of non-compliance).

dismissal after plaintiff was “forewarned of noncompliance, [and] failed to abide by a court order); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 640-43 (1976) (upholding dismissal of action after plaintiffs exhibited “flagrant bad faith” by failing to substantially answer interrogatories after receiving numerous extensions from the court and after “several admonitions by the Court”); *Tower Ventures, Inc. v. City of Westfield*, 296 F.3d at 45 (finding that dismissal of plaintiff’s action was appropriate where plaintiff’s counsel engaged in “serial violations of the court’s scheduling order”).

The actions take by the SEC, Treasury and Justice do not warrant an order to show cause or dismissal of the SEC’s case. The Court has not issued any orders against the SEC, or any other government agency, in this action. Moreover, the SEC, having asserted what it believes is a valid legal argument that it does not control Executive Branch departments, has not refused to comply with any court procedures.

Notably, Nothern does not specifically allege any wrongdoing on the part of the SEC, instead he reserves most of his critique for Treasury, which also has not violated any Court orders, or engaged in any wrongdoing in this case.¹⁹ During discovery in this case, Treasury expended hundreds of hours, and hundreds of thousands of dollars voluntarily producing documents responsive to Nothern’s requests, helping to arrange depositions of current and former Treasury employees, attending depositions involving Treasury employees in New York, Florida and New Jersey, and considering Nothern’s fourteen requests for depositions of current and former Treasury employees pursuant to Treasury’s *Touhy* regulations – nine of which were granted. Docket # 51, Exh. J. Treasury’s actions contradict Nothern’s claim that it has refused to

¹⁹ Nothern is clearly attempting to turn this into a case about Treasury in an effort to deflect attention from his own bad acts. This case is not about mistakes made by Treasury. It is about Nothern’s violations of the federal securities laws. Indeed, this Court has already found that any misconduct on behalf of Treasury does not create a valid defense to the SEC’s insider trading claims in this case. See Memorandum and Order dated November 4, 2005 at 10-11 (Docket # 25).

cooperate with his discovery requests or has engaged in any action that warrants dismissal of this case.

CONCLUSION

If Nothern's renewed motion to compel and motion to show cause are granted, the SEC will be put into a dangerous position of risking dismissal of this lawsuit based on the actions of Executive Branch departments that the SEC does not control. In addition, a finding that Treasury and Justice are party plaintiffs to this action will challenge the independent status of the SEC and raise serious separation-of-powers problems. *See U.S. v. AT&T*, 461 F. Supp. 1314, 1335, n.62 (D.D.C. 1978) (noting that in view of the quasi-legislative status of independent agencies, a requirement that those agencies be considered a party in an action filed by the Executive Branch "might well raise serious constitutional separation-of-powers problems"). If the Court upholds Magistrate Judge Sorokin's decision to deny Nothern's motions, the SEC will be able to promptly proceed with its mission to enforce the federal securities laws in this action without raising separation-of-powers concerns and without impairing Nothern's due process rights, or his ability to obtain the documents that he seeks from Treasury and Justice directly.

For all of the foregoing reasons, the SEC respectfully requests that the Court reject Nothern's Objections to Magistrate Judge Sorokin's January 24, 2007 discovery Order.

Dated: February 21, 2007

Respectfully Submitted,

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(Boston Division)**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 05-CV-10983 (NMG)
)	
v.)	
)	
STEVEN E. NOTHERN,)	
)	
Defendant.)	
)	

**DECLARATION OF JOHN J. ROSSETTI JR. FILED IN SUPPORT OF
U.S. SECURITIES AND EXCHANGE COMMISSION'S RESPONSE
TO DEFENDANT STEVEN E. NOTHERN'S
OBJECTIONS TO MAGISTRATE JUDGE'S ORDER ON DEFENDANT'S RENEWED
MOTION TO COMPEL AND MOTION FOR AN ORDER TO SHOW CAUSE**

John J. Rossetti Jr., pursuant to 28 U.S.C. § 1746, declares under the penalty of perjury as follows:

1. I am a senior counsel for the Securities and Exchange Commission in the above-captioned matter. I am a member of good standing of the New York, Maryland, and District of Columbia bars. Except where otherwise indicated, I make this declaration based upon the documents thus far produced during discovery.

2. A true and correct excerpt from the August 30, 2006 deposition of Salvatore Antonio Fratto is attached as Exhibit A.

3. A true and correct excerpt from the June 23, 2006 deposition of Paul Malvey is attached as Exhibit B.

4. A true and correct excerpt from the August 8, 2006 deposition of Peter Fisher is attached as Exhibit C.

5. A true and correct excerpt from the September 7, 2006 deposition of Geoffrey Kurinsky is attached as Exhibit D.

6. A true and correct excerpt from the June 19, 2006 deposition of David Smith is attached as Exhibit E.

7. A true and correct excerpt from the June 26, 2006 deposition of David Kennedy is attached as Exhibit F.

8. A true and correct excerpt from the January 30, 2007 deposition of Steven Nothern is attached as Exhibit G.

9. A true and correct excerpt of Exhibit 3 from the November 2, 2006 deposition of Bloomberg LP, by Patrick Eldridge, is attached as Exhibit H.

10. A true and correct excerpt from the September 27, 2006 deposition of Galen Criqui is attached as Exhibit I.

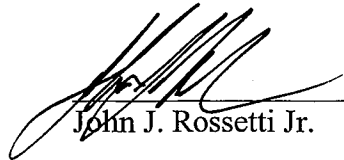
11. A true and correct excerpt from the October 6, 2006 deposition of Verizon Business, by Anne Wilson, is attached as Exhibit J.

12. A true and correct excerpt from the November 3, 2006 deposition of Bloomberg LP, by Darin Langone, is attached as Exhibit K.

13. A true and correct copy of a Memorandum of Activity concerning the Treasury Office of Inspector General's November 7, 2001 interview of Jill Cetina is attached hereto as Exhibit L.

14. A true and correct excerpt from the May 12, 2006 deposition of Brian Collins is attached as Exhibit M.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on
February 20, 2007.



John J. Rossetti Jr.

EXHIBIT A

**Cited Excerpts from the Deposition Transcript
of Salvatore Antonio Fratto
(August 30, 2006)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X

UNITED STATES SECURITIES :

AND EXCHANGE COMMISSION, :

Plaintiff, :

. V. :

Case No. 05-10983

STEVEN E. NOTHERN, :

Defendant. :

-----X

Washington, D.C.

AUGUST 30, 2006

Videotaped deposition of ANTHONY

FRATTO, a witness herein, called for examination by
counsel for Defendant, in the above-entitled
matter, pursuant to notice, the witness being sworn
by Raymond Heer, a Notary Public in and for the
District of Columbia, taken at the offices of Foley
Hoag, Washington, D.C. on August 30, 2006, at 10:35,
a.m. and the proceedings being taken down by
stenotype by Desirae S. Jura, RPR, and transcribed
under her direction.

Page 2

1 A P P E A R A N C E S

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Page 4

1 C O N T E N T S

2	ANTHONY FRATTO	PAGE
3	Examination by Mr. Theodorou	8
4	Examination by Ms. Williams	243
5	Examination by Mr. Theodorou	269

7 E X H I B I T S

8 FRATTO

9	EXHIBIT NO.	DESCRIPTION	PAGE
10	1	Memorandum of Activity	66
11	2	Memorandum of Activity	68
12	3	The Washington Post article	
13		Dated 11/06/2001	79
14	4	Letter from John W. Vardaman	
15		Dated March 4, 2002	90
16	5	Reuters article dated	
17		October 31, 2001	115
18	6	Bloomberg article dated	
19		Oct 31 2001	119
20	7	Department of the Treasury	
21		Treasury News For Immediate	
22		Release dated October 30, 2001	150

Page 5

1 E X H I B I T S - Continued

2 FRATTO

3	EXHIBIT NO.	DESCRIPTION	PAGE
4	8	Hand-drawn diagram	163
5	9	The Wall Street Journal	
6		Article dated November 15, 2001	177
7	10	E-mail from Betsy Holahan	
8		Dated October 31, 2001 with	
9		Attachment	195
10	11	E-mail from Betsy Holahan	
11		Dated October 31, 2001	198
12	12	Department of the Treasury	
13		Office of Public Affairs	
14		Under Secretary of the Treasury	
15		For Domestic Finance	
16		Remarks at the November 2001	
17		Quarterly Refunding	202
18	13	Treasury News For Immediate	
19		Release dated October 31, 2001	206
20	14	E-mail from Betsy Holahan	
21		Dated October 31, 2001 with	
22		Attachment	213

Page 62

1 Q. I'm sorry.

2 A. FOMC. That was the way they had always done
3 it.

4 Q. Did anyone ever consider lockdowns for the
5 refunding conferences?

6 MS. WILLIAMS: Objection.

7 BY MR. THEODOROU:

8 Q. Before October 31st, 2001?

9 A. Not to my knowledge.

10 Q. Did you ever have a discussion with anybody
11 at Treasury about using a lockdown procedure for
12 refunding conferences?

13 A. No.

14 Q. Did anyone at Treasury ever suggest that the
15 lockdown should be used for refunding conferences?

16 A. No.

17 MS. WILLIAMS: Objection.

18 THE WITNESS: Sorry.

19 A. No, never. Again, I think it would be -- my
20 view is that it would have been a solution in
21 search of a problem.

22 BY MR. THEODOROU:

Page 63

1 Q. And why is that?

2 A. Because I had never seen any event of a
3 reporter willfully breaking an embargo.

4 MR. THEODOROU: Why don't we take a
5 five-minute break.

6 THE VIDEOGRAPHER: This concludes tape one
7 in the deposition of Tony Fratto. Off the record
8 at 11:41:30.,

9 (Recess taken.)

10 THE VIDEOGRAPHER: This begins tape two in
11 the deposition of Tony Fratto. On the record at
12 11:48:50.,

13 BY MR. THEODOROU:

14 Q. Mr. Fratto, turning your attention to
15 October 31st, 2001, after your discussions with
16 these reporters, what was your understanding as of
17 October 31st of Treasury's policy on the use of
18 embargoes?

19 MS. WILLIAMS: Objection.

20 A. That we had a -- in terms of, you know,
21 whether it was a policy, my view is that we had a
22 policy of setting embargoes, that it was a

Page 64

1 traditional thing. And, as I learned more about
2 it, that it was a useful and appropriate way to
3 release information at Treasury.

4 BY MR. THEODOROU:

5 Q. What exactly did an embargo prevent a person
6 from doing?

7 A. It prevented a member of the news media from
8 releasing the information that they received,
9 disseminating that information to the general
10 public.

11 Q. Before a particular time?

12 A. Before a particular time. That's right.

13 Q. Did it prevent them from disclosing the
14 information to anyone?

15 MS. WILLIAMS: Objection.

16 A. It -- no. I'd say, my view is the general
17 -- is that it prevented them from just releasing
18 the information to the general public. My view,
19 and I think it was the common understanding among
20 the reporters in the Treasury pressroom, that it
21 was perfectly appropriate to discuss information
22 with members of the news organization, like an

Page 65

1 editor.

2 Q. Did you define for them who at their press
3 organizations they could discuss the information
4 with?

5 A. No. Not specifically.

6 Q. Now, a press person who received the
7 information at a press conference could discuss
8 that information with another Treasury employee?

9 MS. WILLIAMS: Objection.

10 A. They could discuss that information with a
11 member of the Office of Public Affairs.

12 BY MR. THEODOROU:

13 Q. How about another, an employee who did not
14 work at the Office of Public Affairs?

15 A. Reporters are not -- let me put it this way.
16 Treasury employees outside the Office of Public
17 Affairs are not permitted to talk to reporters
18 except by authority granted to them and in the
19 presence of a member of the Office of Public
20 Affairs. That's been a standard policy at Treasury
21 for a long time, since the beginning.

22 Q. Now, before October 31st, 2001, did you

Page 110

1 speak, of breaking an embargo. There's absolutely
2 no evidence of it. And so I don't -- didn't then
3 and I certainly don't today see the need at every
4 press event where we employ an embargo, which is a
5 daily occurrence, to cite the potential penalties
6 if the embargo is broken.

7 BY MR. THEODOROU:

8 Q. Did Treasury obtain the consent from
9 everybody attending the conference that they would
10 abide by the embargo?

11 A. No.

12 Q. Now, directing your attention to October
13 31st, 2001. You attended that refunding
14 conference. Correct?

15 A. Yes.

16 Q. Now, did Elizabeth Holahan ask the attendees
17 at that press conference whether they agreed to
18 honor the 10:00 a.m. embargo that day?

19 A. No. She simply announced the embargo time
20 twice.

21 Q. Did she require the attendees to sign a form
22 stating that or any document that they would honor

Page 112

1 MS. WILLIAMS: Objection.

2 A. Willfully violated. Before October 31st?

3 No, the only event that I really recall was
4 subsequent to October 31st.

5 BY MR. THEODOROU:

6 Q. Apart from willfully, do you remember --
7 prior to October 31st, 2001, do you remember any
8 instance of a premature disclosure of information
9 from a press conference at Treasury?

10 MS. WILLIAMS: Objection.

11 A. An event was brought to my attention, but I
12 wasn't -- I didn't have first-hand experience with
13 it.

14 BY MR. THEODOROU:

15 Q. What, so there was an event brought to your
16 attention where an embargo had been violated?

17 MS. WILLIAMS: Objection.

18 A. I couldn't make a judgment whether the
19 embargo was violated. I was asked -- I think I was
20 asked yesterday about an event involving our deputy
21 secretary Ken Dam, and in your letter specific date
22 referring to October 22nd, it was mentioned. I

Page 111

1 an embargo?

2 A. No. We relied on their ethical
3 responsibilities.

4 Q. So that Treasury officials assumed that the
5 attendees would honor whatever embargo time was
6 announced. Correct?

7 A. Yes.

8 MS. WILLIAMS: Objection.

9 BY MR. THEODOROU:

10 Q. So as of October 31st, 2001, reporters were
11 governed by an honor system not to release
12 information before the embargo time expired?

13 MS. WILLIAMS: Objection.

14 A. Is that an honor system? I don't know.

15 BY MR. THEODOROU:

16 Q. But they were self --

17 A. They were self-enforcing.

18 Q. Self-enforcing.

19 A. Yeah.

20 Q. Now, you testified you were not aware of any
21 instance before October 31st in which an embargo at
22 Treasury was violated?

Page 113

1 haven't had any first-hand knowledge or experience
2 with that. If I have, I'm just not aware. It
3 wasn't an issue area that was in my jurisdiction at
4 that time.

5 Q. Before the October 31st conference, did the
6 issue regarding Mr. Dam's press conference, was
7 that brought to your attention?

8 A. Before October 31st?

9 Q. Before October 31st, 2001.

10 A. I have no recollection of that.

11 Q. I will see if it refreshes your
12 recollection.

13 A. Okay.

14 Q. If it does, it doesn't.

15 MR. THEODOROU: Could we go off the record
16 just a second?

17 THE VIDEOGRAPHER: Off the record at
18 12:46:43.,

19 (Recess taken.)

20 THE VIDEOGRAPHER: On the record at
21 1:25:52.,

22 BY MR. THEODOROU:

Page 130

1 was obviously a unique announcement, and I wanted
 2 to make sure, A, that they had enough time to, you
 3 know, ask questions at the press conference,
 4 thoroughly consume the news that they were getting,
 5 and write thoughtful -- write thoughtful stories.
 6 And, if they had any questions -- you know, it's
 7 not unusual for after a press conference or the
 8 release of information that the reporters, they get
 9 down to their desks, they get down to their desk
 10 and get into writing and they realize they have got
 11 two or three questions on the news you just gave
 12 them.

13 In this case, for example, they might ask
 14 was it -- I mean, it wasn't the case, but, you
 15 know, had 30-year ever been discontinued before?
 16 They would want a little historical data to add
 17 into their stories, things like that. So I wanted
 18 to make sure going into this that they had enough
 19 time on this important piece of news to write good
 20 accurate stories, and so I wanted to make sure they
 21 got that amount of time.

22 Q. And when did you decide it was going to be

Page 131

1 at 10:00 a.m.?

2 A. It was late the previous week.

3 Q. Did you discuss the issue of setting the
 4 time with anybody?

5 A. Yes. I discussed it with -- discussed it
 6 with Betsy. I discussed it with -- I certainly
 7 discussed it with Peter Fisher. And there were
 8 certainly others in the room when we had that
 9 discussion, most likely Brian Roseborough and/or
 10 Tim Bitsberger or Jeff Luther, maybe Paul Malvey.
 11 I don't recall who else was in the room, but I know
 12 there were others in the room and that's the likely
 13 group that would have been there.

14 Q. Was there one discussion with the group?

15 A. There was at least one discussion. There
 16 may have been more. I don't remember specifically.

17 Q. All right. And what was said in that
 18 discussion?

19 A. Well, Peter -- Peter first had the idea that
 20 he wanted to have the press conference be live web
 21 cast. And I objected to that. I thought that, you
 22 know, we already have a fairly sizeable piece of

Page 132

1 news here. I don't think we should try to be --
 2 you know, let's not try to break ground everywhere.
 3 You know, the time to try new things with
 4 established events like a quarterly press
 5 conference was not when you have a major piece of
 6 news because you are just increasing the risk that
 7 something could go wrong. And I never had a whole
 8 lot of faith in the ability of Treasury's Internet
 9 infrastructure to carry off a web cast in a timely
 10 way. So I thought it was a bad idea and argued
 11 against it. And I thought we should actually go,
 12 you know, far more conservative to the other, on
 13 the other extreme, which was what I in the end
 14 advocated and what we agreed to, which was to set a
 15 hard and fast time for lifting the embargo for all
 16 the reasons I just said earlier.

17 Q. When you had this discussion with Mr.
 18 Fisher, how did having a live web cast increase the
 19 chances of something going wrong?

20 A. Well, I mean, most obviously, you know, we
 21 have a history at Treasury of servers going down.
 22 You know? I mean, it wasn't a particularly

Page 133

1 reliable Internet infrastructure at Treasury, and I
 2 didn't have faith that we'd get to 10 minutes
 3 before the press conference and someone from the IT
 4 office would call up and say, you know, we can't
 5 web cast it, or there's going to be a delay, or the
 6 server went down. Something like that. And I
 7 wanted us to be, you know, tried and true,
 8 reliable, give the news to actual human beings who
 9 will get the news out the normal, you know, the
 10 normal way. The only change was to give them, you
 11 know, more time in a hard set embargo.

12 Q. And your concern was that those who attended
 13 the conference would have a leg up on others who
 14 may be watching it in the general public if there
 15 was something wrong with the web cast?

16 MS. WILLIAMS: Objection.

17 A. No.

18 BY MR. THEODOROU:

19 Q. What does the Internet have to do with it,
 20 the Internet being down, if you are having a live
 21 press conference on TV?

22 A. He was asking about web casting it, not

Page 134

1 doing a live --

2 Q. Okay.

3 A. And that would have been an additional
4 problem. He said, well, why -- he said, well,
5 can't we go, can't we just go live? And I said --
6 and in that case it would be broadcast on TV. And
7 I said, "Peter, I can't guarantee that --" you
8 know, the only usual suspects on the TV side that
9 would consider coming to cover a quarterly
10 refunding announcement, you know, would have been
11 Bloomberg, CNBC, you know, maybe Reuters. I would
12 have to ask them, do you plan on going live? And
13 they would say, is he going to make news? And I'd
14 say, I can't tell you. And then you get into a
15 very tricky discussion that I definitely don't want
16 to have. I don't want to tip TV guys that we might
17 be making special news at a quarterly refunding
18 announcement, so I can't talk them into covering
19 events. So I couldn't guarantee to Peter that it
20 would be covered live. The only way you could
21 guarantee that it would be broadcast live would be
22 in the form of a web cast, but I didn't have good

Page 135

1 confidence in the reliability of web casting.

2 Q. Because of the Treasury's Internet
3 facilities?

4 A. Yeah.

5 THE VIDEOGRAPHER: This concludes tape two
6 in the deposition of Tony Fratto. Off the record
7 at 1:48:53.,

8 (Brief recess taken.)

9 THE VIDEOGRAPHER: This begins tape three in
10 the deposition of Tony Fratto. On the record at
11 1:49:30.,

12 BY MR. THEODOROU:

13 Q. Why was October 31st different than the May
14 and August press conference, quarterly refunding
15 press conferences where you had to set a time, as
16 opposed to polling the reporters?

17 A. The news, you know, that we were
18 discontinuing the 30-year bond. That it was
19 definitely -- you know, I knew that. I knew that
20 it was going to be bigger news than, you know --
21 you know, a quarterly refunding press conference is
22 a relatively sleepy affair. It's not usual that

Page 136

1 you find much news there.

2 Q. And why did Mr. Fisher want to go live?

3 A. Peter had been looking at -- Peter comes
4 from, had been up at the New York Fed and had a
5 high degree of interest in trying to find ways to
6 increase efficiency in markets, and one of the ways
7 that you increase efficiency in markets is by
8 reducing the time span in terms of information and
9 transmission of information. So, for example, on
10 the auction results, there was, there had been, you
11 know, time lags. You have to think about the size
12 of these markets and the margins that traders are
13 dealing with. You know, you would get auction
14 results, and sometimes it would take four or five
15 minutes to get from the closing of an auction to
16 get the results published. And Peter worked to
17 find ways to squeeze that down to one to two
18 minutes. He would like to make it instantaneous.
19 So any way that you can find to get instantaneous
20 news to the market in the most transparent way
21 possible, that's something that Peter had a high
22 degree of interest in and just felt it would

Page 137

1 improve market efficiency.

2 Q. Did he have any concern that there would be
3 a release, a premature release of the information
4 discussed at the press conference before the
5 embargo?

6 MS. WILLIAMS: Objection.

7 A. I don't recall him expressing that to me.

8 BY MR. THEODOROU:

9 Q. And what was his response to your proposal?

10 A. In the end he agreed. I mean, he made this
11 philosophy of his, you know -- I was well aware, I
12 spent a lot of time with Peter and I knew that
13 that's what his reasoning was. But I just told him
14 that, in my judgment, it wasn't worth the risk. It
15 just wasn't -- you know, we don't -- if we want to
16 do that, let's do it, but let's do it over some
17 period of time. Let's do it over the next three
18 quarterly refundings, you know, where we -- you
19 know, at one quarterly refunding we say we are
20 considering doing a live web cast. You know? Four
21 months later at the next quarterly refunding we
22 say, at the next quarterly refunding we will web

Page 138

1 cast. And then on the third quarterly refunding,
2 we actually web cast. And then that way, number
3 one, it gives us a lot of time to make sure that we
4 have a rigorous infrastructure to be able to
5 reliably web cast; and, number two, you tell the
6 markets what to expect and they have a lot of time
7 to know how, you know, how to expect news to come
8 to them. And, you know, so I just wanted us to be
9 cautious about doing big changes, and I just did
10 not think that it was appropriate to try to do a
11 major change when we were also making major news.
12 It just wasn't worth the risk.

13 Q. Was your concern -- well, given your
14 concerns about the Internet capability at Treasury,
15 was your concern that something could have gone
16 wrong with the web cast, and at the same time you
17 were releasing information to reporters who would
18 then have advanced information compared to the
19 general public?

20 A. Reporters always have advanced information
21 ahead of the general public. It's their job; we
22 rely on them to disseminate news to the general

Page 139

1 public. So I didn't have a concern about that. In
2 fact, I relied -- when I say, I really mean this.
3 I rely on the Treasury press corps to disseminate
4 news to the markets and the general public. I have
5 much more confidence in that part of dissemination
6 than I do on the web page dissemination. Everyone
7 who has a Web site that they deal with knows that,
8 you know, at the most unpredictable times you have
9 problems with the web page. So I'm not ready and I
10 certainly wasn't ready in the year 2001, I'm not
11 even sure I'm ready in the year 2006 to say I can
12 put full faith and confidence in Internet
13 infrastructure to get that information out on a
14 precise time. We're not there yet.

15 Q. Especially after what happened in October
16 2001.

17 MS. WILLIAMS: Objection.

18 A. No. I mean, that had nothing to do with it.
19 That was human error, that wasn't even
20 infrastructure error. There is lots of
21 infrastructure error. I have seen infrastructure
22 error with our web platform. But that was human

Page 140

1 error. You know? And that human error is going to
2 happen.

3 BY MR. THEODOROU:

4 Q. But I guess my question is, my question is,
5 you had concerns about their ability that -- their
6 Internet capability and, therefore, they might not
7 be able to web cast at the same time. So he would
8 be doing a live press conference to a group of
9 reporters and people attending the conference. And
10 if the web cast couldn't go out, so what? What
11 difference would that make?

12 MS. WILLIAMS: Objection.

13 A. We would have raised expectations that you
14 will find the news on the web cast, and then they
15 wouldn't see it. That was the risk.

16 BY MS. THEODOROU:

17 Q. So it wasn't an issue of market sensitive
18 information getting out ahead?

19 A. No.

20 Q. Okay.

21 A. No. Not at all.

22 Q. Did Mr. Fisher, was Mr. Fisher -- how many

Page 141

1 discussions did you have about this issue with Mr.
2 Fisher?

3 A. Just, I mean, no more than two.

4 Q. Was Mr. Fisher concerned about the danger
5 that that information might leak out before 10:00,
6 a.m.?

7 MS. WILLIAMS: Objection.

8 A. You would have to ask him. If he was, he
9 didn't express it to me.

10 BY MR. THEODOROU:

11 Q. So Mr. Fisher did not express a concern
12 about the leaking out of information?

13 A. Not that I recall.

14 Q. If you could go to Exhibit 1, Mr. Fratto.

15 A. Okay.

16 Q. Page 2, the second paragraph. Do you see
17 that?

18 A. Yes.

19 Q. Now, when did you first learn about the
20 decision to suspend the 30-year bond?

21 A. That sounds about right. I recall it being
22 on Thursday, the 26th.

Page 154

1 until 10:00 a.m. on that date.

2 Q. Were any steps taken to advise attendees who
3 were not members of the press that the news embargo
4 also applied to them when they attended these
5 conferences?

6 A. I wasn't aware --

7 MS. WILLIAMS: Objection.

8 A. I wasn't aware of anyone in attendance --
9 other than some Treasury policy staff, I wasn't
10 aware of others who were not members of the media
11 who were in attendance.

12 BY MR. THEODOROU:

13 Q. So before the October 31st, 2001 conference,
14 you were not aware of anyone other than media
15 attending the quarterly refunding conferences?

16 A. That's right.

17 MS. WILLIAMS: Objection.

18 BY MR. THEODOROU:

19 Q. Did you take any steps before October 31 to
20 determine whether anyone outside of the media
21 attended quarterly refunding press conferences?

22 A. No.

Page 155

1 Q. Do you know if anybody at Treasury ever took
2 any steps before October 31st, 2001 to determine
3 whether nonmedia persons attended the quarterly
4 refunding press conferences?

5 A. I don't know if they did.

6 Q. Now, directing your attention again to
7 Exhibit 1.

8 Before we get there, who was allowed to
9 attend quarterly refunding press conferences before
10 October 31st, 2001?

11 A. There wasn't a policy on who was allowed to
12 attend. But I never had any expectations that
13 anybody -- that anyone except excepting members of
14 the news media and Treasury staff would attend.

15 Q. But there was no policy as to who could
16 attend?

17 A. Not that I'm aware of. I didn't have a
18 policy.

19 Q. Have you ever heard anybody talk about a
20 policy as to who could attend the quarterly
21 refunding press conferences --

22 A. No.

Page 156

1 Q. -- before October 31st, 2001?

2 A. No.

3 Q. As of October 31st, 2001, do you know who at
4 Treasury was responsible for deciding who could
5 attend the quarterly refunding press conferences?

6 A. I'm sorry, could you say that again?

7 Q. As of October 31st, 2001, do you know who at
8 Treasury was responsible for deciding who could
9 attend press conferences, refunding press
10 conferences?

11 A. No. All I can say is the Office of Public
12 Affairs was responsible for inviting members of the
13 media and clearing them in for press conferences,
14 including quarterly refunding announcements.

15 Q. Do you know if there was a comprehensive
16 list of everyone who attended the October 31st,
17 2001 press conference?

18 A. No.

19 Q. Now, how did those individuals who were
20 attending the quarterly refunding press conferences
21 as of October 31st, 2001 get into the Treasury
22 Building on the morning of the press conference?

Page 157

1 A. Those individuals, meaning members of the --
2 are you make a distinction between members of the
3 media or nonmembers of the media?

4 Q. Anybody who was attending.

5 A. Well, for anyone to enter the Treasury
6 Building, they need to be cleared by Secret
7 Service. And unless they have a permanent badge,
8 they need to be -- a permanent Treasury badge, in
9 which they can't wouldn't have to be cleared in.
10 So if they were cleared in, they had to be escorted
11 to wherever they need to be in the building by a
12 Treasury official.

13 Q. And what room in the Treasury Building was
14 normally used for the quarterly refunding press
15 conferences?

16 A. The diplomatic reception room.

17 Q. And is there a reason why the diplomatic
18 reception room as opposed to another conference
19 room was used for that particular kind of
20 conference?

21 A. There is no other conference -- there was no
22 other conference room at the time. The cash room.

EXHIBIT B

**Cited Excerpts from the Deposition Transcript
of Paul Malvey
(June 23, 2006)**

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

- - - - -)
UNITED STATES SECURITIES AND)
EXCHANGE COMMISSION,)
Plaintiff,)
v.) No. 05-10983 (NMG)
STEVEN E. NOTHERN,)
Defendant.)
- - - - -)

Washington, D.C.

Friday, June 23, 2006

Deposition of PAUL FRANCIS MALVEY, a witness herein,
called for examination by counsel for Defendant in
the above-entitled matter, pursuant to agreement, the
witness being duly sworn by CHERYL A. LORD, a Notary
Public in and for the District of Columbia, taken at
the offices of FOLEY HOAG LLP, 1875 K Street, N.W.,
Suite 800, Washington, D.C., at 10:10 a.m., Friday,
June 23, 2006, and the proceedings being taken down
by Stenotype by CHERYL A. LORD, RPR, CRR, and
transcribed under her direction.

Page 2

1 APPEARANCES:

2
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Page 4

1 CONTENTS

2 WITNESS EXAMINATION
3 PAGE NO.

4 PAUL FRANCIS MALVEY

5 By Mr. Shope	7
6 Afternoon Session	120
7 By Ms. Williams	293
8 By Mr. Shope	325
9 By Ms. Williams	338

10

11 EXHIBITS

12 (Exhibits attached.)

13 MALVEY EXHIBIT NO. PAGE NO.

14 1 Letter, 6-21-06	16
15 2 Subpoena in a Civil Case	18
16 3 Hand-drawn diagram	71
17 4 Letter, 1-28-00, No. DC 001660	111
18 5 Memorandum, 11-6-01, and attachments	132
19 6 Minutes, 10-30-01, Nos. DC	
20 000042-44	174
21 7 Email, 10-31-01	199
22 8 Bloomberg graph	203
23 9 Email, 10-31-01	210
24 10 Email, 10-31-01	216
25 11 Memorandum of Activity, 11-15-01	242

Page 3

1 APPEARANCES CONTINUED:

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11 ALSO PRESENT:

12 Erica L. Ruddy and Dustin Lavalley, videographer

13

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Page 5

1 EXHIBITS CONTINUED

2 MALVEY EXHIBIT NO. PAGE NO.

3 12 Hand-drawn diagram	265
4 13 Article by John Connor	276
5 14 Treasury News	284
6 15 Minutes, 10-30-01	301

7

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Page 118

1 If -- if you go back, we're talking about
 2 a period of time when we were talking about paying
 3 down the federal debt by 2009 or 2011.
 4 Q. M-hm.
 5 A. We had paid down 670 billion dollars --
 6 Q. M-hm.
 7 A. -- so there was -- I remember briefing I
 8 think Senate fi- -- or Senate budget and House
 9 financial services committee staff about Treasury
 10 financing and what the world would look like without
 11 treasuries.
 12 Q. Okay. And had there been reports that
 13 Mr. Fisher had a view on -- on whether or not the
 14 long bond should be eliminated?
 15 A. No, no.
 16 I mean, that's -- no. I don't mean to
 17 smile, but I mean, we wouldn't -- if you're an
 18 official in that position, you don't hold views in
 19 public.
 20 Q. Okay. No.
 21 I'm talking about whether he had views on
 22 the subject even before he was confirmed.
 23 A. Don't know. He was in charge of the
 24 market divisions of the New York Fed.
 25 Q. Okay. Now, the --

Page 119

1 MR. ROSSETTI: I'm sorry.
 2 John, how much longer are you going to be
 3 going before we break?
 4 MR. SHOPE: Well, I was hoping to go for a
 5 little bit since I think both I and the witness had
 6 something to eat not too long ago.
 7 MR. ROSSETTI: All right. Can we just
 8 take a quick break?
 9 MR. SHOPE: Okay. Sure.
 10 We can take it right now if you like.
 11 MR. ROSSETTI: Yeah.
 12 Let me do that, and I'll be right back.
 13 THE VIDEOGRAPHER: Off the record at
 14 12:21:42 AM.
 15 (Whereupon, at 12:21 p.m., the deposition
 16 in the above-entitled matter was recessed, to
 17 reconvene at 12:50 p.m., this same day.)
 18
 19
 20
 21
 22
 23
 24
 25

Page 120

1 AFTERNOON SESSION
 2 (12:50 p.m.)
 3
 4 Whereupon,
 5 PAUL FRANCIS MALVEY,
 6 the witness testifying at the time of recess, having
 7 been previously duly sworn, was further examined and
 8 testified further as follows:
 9
 10 THE VIDEOGRAPHER: We're back on the
 11 record at 12:50:33 PM.
 12
 13 EXAMINATION BY COUNSEL FOR DEFENDANT (RESUMED)
 14 BY MR. SHOPE:
 15 Q. Actually, before we continue on to the
 16 suspension of the long bond, I wanted to follow up on
 17 a little bit of some of the things we were talking
 18 about with regard to press embargoes before we had
 19 the lunch break.
 20 First of all, did you -- other than the
 21 matter with -- regarding Mr. Davis that we'll get
 22 into in some detail, did you ever hear of any other
 23 violation of the embargo rule as you understood it
 24 with regard to any quarterly refunding conference?
 25 A. I mentioned one, but it was 30 years ago.

Page 121

1 Q. I'm sorry?
 2 A. 30 years ago.
 3 I don't have any direct information on it,
 4 but there was -- and what -- wasn't like this, but
 5 something happened 30 years ago.
 6 Q. And what was -- what was that?
 7 A. It was that the Federal Reserve used to --
 8 I'm sorry -- Treasury would send the press release to
 9 the Federal Reserve, and -- to the Federal Reserve
 10 Bank in Philadelphia -- and the Federal Reserve Bank
 11 in Philadelphia would fax it to the other 11 banks.
 12 And so they would send it to -- fax it to
 13 the Federal Reserve Bank in Philadelphia about 15
 14 minutes in advance so that he could fax to the other
 15 11 banks so the presidents of the other 11 banks
 16 would have the news.
 17 And it turned out that he was being wined
 18 and dined and being taken to baseball -- Yankee
 19 baseball fan -- games and other things by somebody in
 20 New York and so he would give this one person in New
 21 York a heads-up on the news, but that's -- was mid-
 22 to late '70s.
 23 Q. Okay. And that was a scandal about which
 24 you heard at the time?
 25 MR. ROSSETTI: Objection.

Page 122

1 A. It wasn't a scandal.

2 Q. Oh.

3 A. I mean, I don't think -- I have no idea
4 whether it was even in the public domain.

5 All I -- an old-timer told me that.

6 Q. M-hm. And do you know what happened to
7 the individual?

8 A. I have no idea.

9 Q. Okay. And were there ever to your
10 knowledge any violations of the -- I'm sorry.

11 So just to be clear: Other than that
12 incident about which you had heard from an old-timer,
13 there -- there -- there weren't any other re- --
14 violations of the quarterly refunding embargoes to
15 your knowledge?

16 A. Not to my knowledge, no.

17 Q. Okay? Did you ever -- now, we talked
18 about earlier about the embargo that related to the
19 weekly auction notice.

20 Do you recall that?

21 A. Yes. Okay. Right.

22 Q. In other words we were talking about that
23 earlier today.

24 A. M-hm.

25 Q. Was that embargo ever violated to your

Page 123

1 knowledge?

2 A. Not to my knowledge, no.

3 Q. Okay. If there had been a violation,
4 would you likely have been told about it?

5 A. I suspect so.

6 Q. M-hm. By the way, if there had been an
7 embargo -- if there had been a violation of the
8 quarterly refunding embargo would you likely have
9 heard about it?

10 A. I suspect so.

11 Q. Okay. And was there -- was there any
12 penalty if somebody did violate the embargo for the
13 quarterly refunding announcement?

14 A. I'm an economist. I have no idea.

15 Q. Is the answer you don't know?

16 A. I don't know.

17 Yeah.

18 No, I don't know.

19 Q. I guess what I'm getting at, as far as --
20 as far as -- as far as -- I'm not just asking about
21 criminal penalty.

22 I'm just asking about, was there anything
23 that would happen to the person, you know --

24 A. I have --

25 Q. -- from the point of view of the Treasury

Page 124

1 Department, for example.

2 A. I have no idea.

3 (Discussion off the record.)

4 BY MR. SHOPE:

5 Q. Let me rephrase the question.

6 As far as you're aware, was there any
7 policy that the Treasury Department had with regard
8 to what would happen if one of the persons attending
9 the quarterly refunding conference were to fail to
10 abide the embargo and to disclose the information in
11 advance of the embargo?

12 MR. ROSSETTI: Objection.

13 A. I have no idea. It's not my area.

14 BY MR. SHOPE:

15 Q. Okay. That's fine.

16 Were the press releases that were read at
17 the quarterly refunding conference, what you referred
18 to as the talking points earlier -- would those be
19 posted on the Treasury Web site?

20 A. They would go up eventually.

21 Q. Okay. And do you know who was in charge
22 of making that happen?

23 A. A career person in -- in the public
24 affairs office.

25 Q. Do you know who that was?

Page 125

1 A. I can't remember her name.

2 Florence or --

3 Q. Frances?

4 A. Frances.

5 Q. Frances Anderson?

6 A. I -- Helen Anderson worked for me --

7 Q. I'm sorry?

8 A. Helen Anderson worked for me --

9 Q. Oh.

10 A. -- and I just knew her as Frances. I'm
11 not quite sure what her last name was.

12 Q. Okay. And the -- now, other than with
13 regard to October, the quarterly refunding conference
14 on October 31, 2001, did you ever hear of any
15 incidents where press releases were posted on the Web
16 site of the Treasury Department before it was
17 intended or at least intended by somebody that they
18 go up?

19 MR. ROSSETTI: Objection.

20 A. I -- I'm not familiar with that, no.

21 BY MR. SHOPE:

22 Q. Do you know -- do you know who a Kenneth
23 Dam is?

24 A. Ken Dam?

25 Q. M-hm.

EXHIBIT C

**Cited Excerpts from the Deposition Transcript
of Peter Fisher
(August 8, 2006)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES SECURITIES)	
AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
vs.)	No. 05-10983
)	(NMG)
STEVEN E. NOTHERN,)	
)	
Defendant.)	
-----)	

VIDEOTAPED
DEPOSITION OF PETER R. FISHER
New York, New York
August 8, 2006

Reported by:
PAMELA J. MAZZELLA, RPR
JOB NO. 7046

Page 2

August 8, 2006
10:03 a.m.

Deposition of PETER R. FISHER,
held at the offices of Davis Polk &
Wardwell, 450 Lexington Avenue, New
York, New York, pursuant to Amended
Notice, before Pamela J. Mazzella, RPR,
a Notary Public of the State of New
York.

Page 4

APPEARANCES: (Cont'd.)

MORVILLO, ABRAMOWITZ, GRAND, IASON &
SILBERBERG, P.C.
Attorneys for the Witness
565 Fifth Avenue
New York, New York 10017
BY: CYRUS R. VANCE, JR., ESQ.

ALSO PRESENT:

IAN PAOLA - Videographer

Page 3

APPEARANCES:

UNITED STATES SECURITIES AND EXCHANGE
COMMISSION
DIVISION OF ENFORCEMENT
Attorneys for Plaintiff

100 F Street, N.E.

Washington, D.C. 20549-4010

BY: ERICA Y. WILLIAMS, ESQ.

AND: JOHN J. ROSSETTI, JR., ESQ.,
Senior Counsel

DEPARTMENT OF THE TREASURY
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

BY: THOMAS M. McGIVERN, ESQ.

FOLEY HOAG LLP

Attorneys for Defendant

Seaport World Trade Center West

155 Seaport Boulevard

Boston, MA 02210-2600

BY: JOHN A. SHOPE, ESQ.

Page 5

THE VIDEOGRAPHER: Good morning.

Here begins tape number 1 of the
videotaped deposition of Mr. Peter
Fisher in the matter of United States
Securities and Exchange Commission
versus Steven E. Nothorn in the United
States District Court for the District
of Massachusetts.

This deposition is being held at
450 Lexington Avenue, New York, New
York, on August 8, 2006 at approximately
10:03 a.m.

My name is Ian Paola from the firm
of Esquire Deposition Services and I am
the legal video specialist. The court
reporter is Pam Mazzella in association
with Esquire Deposition Services.

Will counsel please introduce
themselves for the record.

MR. SHOPE: Yes, my name is John
Shope, S-H-O-P-E, and I'm from the law
firm of Foley Hoag in Boston and I
represent the defendant, Steven Nothorn.

MS. WILLIAMS: Erica Williams for

Page 174

Fisher

Q. And so he didn't give any more detail other than it was a shame that the information had gotten out early?

A. I -- as I had been talking to Michelle Davis, I assume the secretary had also. I didn't expect for him to talk to me about, in any detail about press office procedures.

Q. Now, you mentioned to Ms. Williams that the market is constantly trying to anticipate what it is the Treasury is going to do at the Refunding Conferences, correct?

A. Yes.

Q. And would it be also fair to say that it is a goal of the Treasury to make its announcement at those Refunding Conferences regular and predictable?

MS. WILLIAMS: Objection.

A. The phrase "regular and predictable" refers to the -- there is a term used in Treasury debt management to convey that auctions occur on regular and predictable dates.

Many sovereign borrowers change

Page 176

Fisher

securities at auction, and never changing your policies or inducing a great deal of inertia in the policy-making process.

I don't think there is anything in the fact of regular and predictable auction calendar that suggests a policy is best pursued which changes the auction, changes debt management policies the least.

Changes are being made all the time in increments and are then being announced as clearly as one can to the market. So I would see it rather differently than your question implied.

Q. Do you recall there being criticism that the announcement on October 31 just took the market by surprise?

A. I recall some people saying it took them by surprise and other people saying they anticipated it.

Q. But do you recall anyone saying in substance that the Treasury did a bad job here because it failed to prepare the market for this information in advance?

A. Well, you have shown me various

Page 175

Fisher

when they will be auctioning their bonds. They do not provide a forward calendar that commits them to auctioning securities at particular dates. Whereas the United States Treasury since the 1970s has committed itself to a practice of regular and predictable auctions.

So that phrase refers to the auction calendar. The announcement process is in advance of those auctions to specify the quantities that will be announced, that will be auctioned on those specified dates.

Q. So there is no policy goal within Treasury in your understanding of trying to make policies themselves, as opposed to the specific dates of auctions, regularly and predictable?

MS. WILLIAMS: Objection.

A. Well, policies change from one administration to another. I think that it's very important to recognize the difference between creating a regular and predictable calendar of auctions, which allows investors to anticipate when they can acquire Treasury

Page 177

Fisher

clippings which say as much, and that's the distinction I'm trying to draw, is if you leak it to the market in advance, then you don't surprise the market, but then you've leaked it, and that would be a bad process in my view.

Q. One last question. Ms. Williams was asking you about your regrets.

Do you regret not having been more forceful with Michelle Davis about distributing the decision to cancel the long bond in the form of an internet announcement without an embargo?

A. No because I think that she and I had a very full discussion about the pros and cons of that. I feel I informed her of my feeling and she informed me of hers. And I feel I have been involved enough in government and public decision-making to know that you don't always get the outcome you want, but if you got a chance to debate the pros and cons of something and made as good a decision as the responsible person could, which was Michelle in that case, then it's

Page 178

1 Fisher
 2 pretty good.
 3 Q. Did you ever tell anybody about the
 4 conversation that you had had with Ms. Davis
 5 in anticipation of the conference on October
 6 31 in which you had suggested not using an
 7 embargo?
 8 A. Did I ever -- have I ever told
 9 anyone since or did I ever tell anyone at the
 10 time? Please rephrase.
 11 Q. Before today did you ever tell
 12 anybody oh, by the way, I had this
 13 conversation with Miss Davis in which I
 14 suggested that we get rid of the embargo?
 15 A. I'm confident I discussed it with
 16 my staff at the time, the pros and cons of
 17 it. I don't recall making a public matter of
 18 it after the fact.
 19 Q. In other words, your memory is that
 20 you discussed with your staff prior to
 21 October 31 the fact that you were having a
 22 conversation with Ms. Davis in which you were
 23 proposing not using the embargo?
 24 MS. WILLIAMS: Objection.
 25 A. That's my recollection.

Page 179

1 Fisher
 2 Q. And did you ever hear any
 3 suggestion by your staff that the events of
 4 October 31 were attributable to your own
 5 hubris?
 6 A. No.
 7 MR. SHOPE: I have nothing
 8 further.
 9 MS. WILLIAMS: I have one
 10 question.
 11 EXAMINATION (Cont'd.)
 12 BY MS. WILLIAMS:
 13 Q. Do you recall who told you that Mr.
 14 Malvey had let Mr. Davis attend the October
 15 31 conference?
 16 A. I don't recall, I don't recall who
 17 informed me of that.
 18 Q. Did you have any knowledge about
 19 the circumstances under which Mr. Malvey
 20 allowed Mr. Davis to attend?
 21 A. No prior knowledge. After the fact
 22 only what I was told about, what I said a few
 23 minutes ago, about his being, Mr. Malvey
 24 signing him in somehow or giving him
 25 permission to attend the press briefings.

Page 180

1 Fisher
 2 Q. Do you know if Mr. Davis had agreed
 3 to abide by the embargo?
 4 MR. SHOPE: Objection.
 5 A. I don't have any specific knowledge
 6 of that.
 7 MS. WILLIAMS: I have no further
 8 questions.
 9 MR. SHOPE: I have nothing.
 10 THE VIDEOGRAPHER: The time is
 11 1:27 p.m. and this marks the end of the
 12 videotaped deposition of Mr. Peter
 13 Fisher.
 14 (Time noted: 1:27 p.m.)

 PETER R. FISHER

18 Subscribed and sworn to before me
 19 this ____ day of _____, 2006.
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____

Page 181

1
 2 CERTIFICATE
 3 STATE OF NEW YORK)
 4 : ss.
 5 COUNTY OF NEW YORK)
 6
 7 I, PAMELA J. MAZZELLA, RPR, a
 8 Notary Public within and for the State
 9 of New York, hereby certify:
 10 That PETER R. FISHER, the witness
 11 whose deposition is hereinbefore set
 12 forth, was duly sworn by me and that
 13 such deposition is a true record of the
 14 testimony given by the witness.
 15 I further certify that I am not
 16 related to any of the parties to this
 17 action by blood or marriage, and that I
 18 am in no way interested in the outcome
 19 of this matter.
 20 IN WITNESS WHEREOF, I have
 21 hereunto set my hand this 11th day of
 22 August, 2006.
 23
 24
 25

 PAMELA J. MAZZELLA, RPR

EXHIBIT D

**Cited Excerpts from the Deposition Transcript
of Geoffrey Kurinsky
(September 7, 2006)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X

UNITED STATES SECURITIES AND)	C.A. 05-10983
EXCHANGE COMMISSION,)	(NMG)
Plaintiff,)	
)	VOLUME: I
vs.)	PAGES: 1-242
)	EXHIBITS: 1-12
STEVEN E. NOTHERN,)	
Defendant.)	

-----X

VIDEOTAPED DEPOSITION OF GEOFFREY

KURINSKY, a witness called on behalf of the
Plaintiff, pursuant to the provisions of the
Massachusetts Rules of Civil Procedure,
before Jill Shepherd, Registered
Professional Reporter and Notary Public, in
and for the Commonwealth of Massachusetts,
at the offices of U.S. Securities and
Exchange Commission, 33 Arch Street, Boston,
Massachusetts, on Thursday, September 7, 2006,
commencing at 10:18 a.m.

Page 2

1 APPEARANCES:
2
3 UNITED STATES SECURITIES AND EXCHANGE
4 COMMISSION
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6 (By Erica Williams, Esquire)
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13 On Behalf of the Plaintiff.
14
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Page 3

1 APPEARANCES, CONTINUED
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10 On Behalf of the Defendant,
11 Steven Nothern.
12
13
14 ALSO PRESENT: George Dobrenty, Videographer
15 Steve Nothern, Defendant
16

17 * * * * *
18
19
20
21
22
23
24
25

Page 4

1 INDEX
2 WITNESS: PAGE
3 GEOFFREY KURINSKY
4 Examination by Mr. Rossetti 6, 219
5 Examination by Mr. Shope 177
6
7 EXHIBITS
8 NO. DESCRIPTION PAGE
9 1 Notice of Taking Deposition 5
10 2 Subpoena 5
11 3 SECNOTH00130192- 61
12 SECNOTH00130193
13 4 SECNOTH00117152- 118
14 SECNOTH00117213
15 5 M000565-M000579 128
16 6 M000113-M000114A 131
17 7 SECNOTH00131632- 148
18 SECNOTH00131637
19 8 DC002018-DC002023 185
20 9 DC002359-DC002361 191
21 10 DC002464-DC002467 233
22 11 DC002451-DC002454 236
23 12 Pages 1-4 of the 239
24 Deposition of
25 S. Nothern

Page 5

1 PROCEEDINGS
2 (Exhibit Nos. 1-2 marked)
3 THE VIDEOGRAPHER: Good morning.
4 We're recording and are now on the record.
5 Today's date is September 7, 2006, and the
6 time is 9:24 a.m. My name is George
7 Dobrenty. I am a legal videographer for
8 Alderson Court Reporters.
9 This is a deposition of Geoffrey
10 Kurinsky in the matter of the SEC vs. Steven
11 Nothern in the U.S. District Court for the
12 District of Massachusetts, Boston division,
13 C.A. No. 05-10983 (NMG). This deposition is
14 being taken at 33 Arch Street, Boston,
15 Massachusetts. The court reporter is Jill
16 Shepherd. Counsel will state their
17 appearances and the court reporter will
18 administer the oath.
19 MR. ROSSETTI: John Rossetti for
20 the plaintiff, United States Securities And
21 Exchange Commission.
22 MS. WILLIAMS: Erica Williams for
23 the United States Securities and Exchange
24 Commission.
25 MR. SHOPE: John Shope,

Page 98

1 money?

2 A. Every day I would look at the, you know --

3 talking about the corporate bond market, I

4 mean, I could look at the portfolio. There

5 was no rush to spend that money that day. I

6 managed -- I used portfolio duration, which

7 is a measure of the interest rate

8 sensitivity as the prime position -- as the

9 prime input in the position of my portfolio,

10 what the duration was.

11 Q. Based on what your most significant holdings

12 were?

13 A. Right. I got that from a system,

14 calculated.

15 Q. Okay. And when would you typically perform

16 that sort of analysis?

17 A. First hour. Get ready for the day, and I

18 had all my accounts.

19 Q. In determining how you might spend the money

20 that was available to you on a given day,

21 what else would you do to do an analysis?

22 A. You know, I'd get market color. I mean, I'd

23 see if opportunities came up. You know,

24 particular corporate issues that looked

25 attractive, an idea from any one of my

Page 99

1 specialists, mortgage idea, asset-backed

2 idea, Treasury idea, that I would evaluate.

3 Q. When you said you'd get ideas from your

4 specialists, you are meaning whether it was

5 Mr. Nothern or Vaream or Smith?

6 A. Right. Right.

7 Q. Okay. You said you'd look to get market

8 color. What did you mean by that?

9 A. Talk to the dealers. You know, what's going

10 on in the market? What's happening to, you

11 know, corporate trends? What's happening to

12 interest rates in general. Sort of general,

13 you know, "How's the marketing opening?

14 What's the tone for the day?"

15 Q. Did there come a point in time on

16 October 31st that you made a decision that

17 you were going to spend some of the

18 \$15 million to buy some securities?

19 A. Yes.

20 Q. And what securities did you purchase?

21 A. Bought 10 million Treasury bonds.

22 Q. That's the 30-year bonds?

23 A. Correct.

24 Q. What led you to that decision to purchase

25 those Treasury bonds?

Page 100

1 A. Well, it was a trade that they were doing on

2 the trading desk.

3 Q. When you say "we," who are you referring to?

4 A. It was a trade that Steve Nothern, Rick

5 Smith, Peter Vaream -- it was a general --

6 we were doing a Treasury trade, and it was

7 -- you know, it was a trade that I went

8 along with the group and I bought 10 million

9 bonds.

10 Q. Do you know if David Kennedy was in on that

11 transaction?

12 A. I believe he was.

13 Q. Do you know if Peter Vaream was in on that?

14 A. I believe Peter was out. If that was the

15 case, we may have put some in his accounts.

16 I think he was out that day.

17 Q. So as you sit here today, you think that

18 Peter Vaream was out of the office that day?

19 A. Yeah, I'm not sure, but...

20 Q. Okay.

21 A. But I know the fact that Rick Smith, Dave

22 Kennedy, Steve Nothern, I was there, Jim

23 Calmas was there.

24 Q. Of those people that you just mentioned, who

25 was involved in this purchase for Treasury

Page 101

1 bonds that you described?

2 A. I think Steve, Rick, David and myself. I

3 don't think Jim was.

4 Q. What was the total amount of the purchase?

5 A. Of the whole desk?

6 Q. Yes.

7 A. I believe it was 70 million.

8 Q. Of that 70 million, you said you purchased

9 10 million?

10 A. That's correct.

11 Q. Do you know how much of that 70 million or

12 remaining 60 million the others purchased?

13 A. Yeah. I think Steve bought 25, Dave Kennedy

14 bought 25, Rick bought 10. Again, this is

15 my recollection, and I bought 10. And I

16 might have -- I'm thinking if -- I am not

17 sure if I was thinking Peter's accounts or

18 not.

19 Q. Would have been included in the 10 million?

20 A. Yeah.

21 Q. I see. Now, what led up to this group --

22 this was a group decision to purchase these?

23 A. Yeah.

24 Q. What led up to this decision to purchase

25 these bonds?

Page 102

1 A. Well, there was discussion as to whether the
 2 Treasury Department would eliminate -- you
 3 know, there was a lot of speculation about
 4 what the Treasury Department would do with
 5 the 30-year Treasury, whether they would,
 6 you know, auction bonds this time or not.
 7 And there was discussion -- Steve got up and
 8 said that there was a discussion that they
 9 might -- you know, that they might -- that
 10 someone thought that the 30-year Treasury
 11 bond might be eliminated from the auction.
 12 Q. Did he say who that someone was that thought
 13 the Treasury would eliminate the 30-year
 14 bond?
 15 A. Yeah, I recall it was from Pete Davis.
 16 Q. Can you tell me specifically what it is that
 17 Steve Nothern mentioned about Pete Davis?
 18 A. He said that he had -- Pete Davis told him
 19 that the Treasury was not going to have a
 20 30-year bond auction in the refunding.
 21 Q. When did Steve Nothern make that statement?
 22 A. I remember it around 9:30ish. I don't
 23 remember exactly.
 24 Q. I think you said "he got up." What did you
 25 mean, "he got up"?

Page 103

1 A. I was on the phone talking about a corporate
 2 trade and Steve was standing up talking to
 3 Rick, he's in his station, and then Dave
 4 afterwards, and they are talking about it
 5 and they are starting to put a trade
 6 together. And then I got attention, and
 7 then said, you know, "Take me along. I will
 8 take 10 million." I was focused on a
 9 corporate -- something else, and it was a
 10 trade that the desk was doing, so take me
 11 along.
 12 Q. Now, you said that you were on the phone?
 13 A. Yeah.
 14 Q. Who were you on the phone with at the time?
 15 A. I don't remember, but it was related to a
 16 corporate trade. I don't remember whether I
 17 was getting information but I think I stood
 18 up, two people were up. I'm thinking,
 19 "What's going on?" I'm still on the phone
 20 and talking, and then I overhear the buy,
 21 and I said, "I will take 10 million."
 22 Q. When you were on the phone, were you
 23 standing or seated?
 24 A. I was seated, and then I got up because I
 25 realized other people were up and discussing

Page 104

1 something.
 2 Q. While you were seated at your desk and on
 3 the phone, did you see that other -- did you
 4 notice that other people were standing?
 5 A. Yeah.
 6 Q. And the people that you noticed were
 7 standing, were whom?
 8 A. If I remember, Steve and Rick.
 9 Q. Steve Nothern and --
 10 A. Right.
 11 Q. -- and Rick Smith?
 12 A. Correct.
 13 Q. Two of the portfolio managers you work with?
 14 A. That's correct.
 15 Q. All right. And you saw them standing. Were
 16 they in a discussion with one other?
 17 A. Steve was in his work station standing up
 18 and Rick was in his work station standing
 19 up. The way we always -- they talked about
 20 things all the time.
 21 Q. And at that point, did you notice anybody
 22 else standing?
 23 A. Not that I can recall.
 24 Q. Did you notice David Kennedy at all at this
 25 point?

Page 105

1 A. No.
 2 Q. Was David Kennedy on the desk at that point?
 3 A. I think so.
 4 Q. Was he standing or seated?
 5 A. I don't -- I'm guessing he was probably
 6 seated, but I don't remember.
 7 Q. Now, I thought you said when you were on the
 8 phone you noticed some people standing and
 9 then you stood up.
 10 A. Yeah.
 11 Q. What prompted you to stand up?
 12 A. Well, it's like commotion. I mean,
 13 something is happening; something is going
 14 on. It's a natural instinct to see what's
 15 going on.
 16 Q. You said there was a commotion. What do you
 17 mean, "There was a commotion"?
 18 A. People were up, discussing about a trade,
 19 and I'm part of the team, and, you know, I,
 20 like, want to know what's going on because
 21 maybe I want to get involved. It was a --
 22 happened many times a day. I mean...
 23 Q. How did you -- you said they were discussing
 24 a trade. How did you know they were
 25 discussing a trade?

Page 106

1 A. Well, I guess they were standing up. I
 2 could see that there was conversation --
 3 there was John Cadogan, not specifically,
 4 there was some dialogue going on and John's
 5 a trader, so something was happening.
 6 Q. Could you hear what they were saying?
 7 A. Not specifically.
 8 Q. All right. And what did you do? Let me
 9 withdraw that.
 10 A. Right.
 11 Q. At this point, you are on the phone, you see
 12 Nothern standing, you see Rick Smith
 13 standing --
 14 A. Yeah. And people saying what they are doing
 15 -- saying they are --
 16 MR. GOLDSTEIN: Just wait for
 17 Mr. Rossetti to finish his question.
 18 MR. ROSSETTI: Thanks.
 19 Q. You are hearing that they are going to be
 20 doing something and they are talking with
 21 John Cadogan; is that correct?
 22 A. (No audible response.)
 23 Q. You got to verbalize your answer.
 24 A. They are talking among themselves.
 25 Q. Rick, Steve Nothern?

Page 107

1 A. Right.
 2 Q. And John?
 3 A. Correct.
 4 Q. The trader?
 5 A. That's correct.
 6 Q. At that point, could you hear what they were
 7 discussing among themselves?
 8 A. Well, I knew they were buying Treasuries.
 9 Q. How did you know that?
 10 A. Because I could hear it.
 11 Q. What did you hear?
 12 A. By then, I was aware of the refunding
 13 announcement. At that point I was aware the
 14 Treasury market was up, so my senses were
 15 risen to the fact that there was information
 16 that had been -- that had apparently been
 17 released.
 18 Q. Okay. So, specifically, what did you
 19 hear -- you said there they were purchasing
 20 Treasury bonds?
 21 A. Right.
 22 Q. What specifically did you hear at that
 23 point?
 24 A. I heard that there would have been a call
 25 and -- from Pete Davis that the Treasury

Page 108

1 might be eliminating the 30-year Treasury
 2 bond from the auction.
 3 Q. When you heard that, were you still in your
 4 work station or had you moved over to where
 5 Steve Nothern --
 6 A. I was in my work station.
 7 Q. All right. So did Steve Nothern make that
 8 statement?
 9 A. Right. Yeah.
 10 Q. So was he announcing it to you as well?
 11 A. Yeah. He was talking -- talking about it
 12 with Rick, I assume. I didn't hear what
 13 they were talking about, but that was the
 14 topic, topic du jour.
 15 Q. But when Steve Nothern made this statement
 16 about Peter Davis -- if you go to
 17 Exhibit 3 --
 18 A. Yeah.
 19 Q. -- you see station 240 is where Nothern sat?
 20 A. Right.
 21 Q. And you sat at 265?
 22 A. Correct.
 23 Q. What was the distance between Nothern's work
 24 station and your work station?
 25 A. 25 feet. I don't know.

Page 109

1 Q. Okay.
 2 A. Not a lot. I mean, you could easily be
 3 heard.
 4 Q. Right. But he'd have to be intending to
 5 speak to you --
 6 A. Right. Right.
 7 Q. -- in a louder voice?
 8 A. Right.
 9 Q. And that's what he did to tell you what --
 10 A. Right.
 11 Q. -- Pete Davis had told him?
 12 A. That's correct.
 13 Q. All right. Was this before or after you had
 14 heard people purchasing bonds?
 15 MR. SHOPE: Note my objection.
 16 A. Could you repeat the question?
 17 Q. I thought you had said that at some point
 18 you heard Steve Nothern and Rick Smith
 19 giving an order to Cadogan to purchase
 20 bonds. Did I have that correct?
 21 A. Right.
 22 Q. All right. This statement that Steve
 23 Nothern said about Peter Davis --
 24 A. Right.
 25 Q. -- did that come before or after you hearing

Page 110

1 Steve Nothern and --
 2 A. It was before.
 3 Q. -- Rick's Smith --
 4 A. Right.
 5 Q. -- telling Cadogan they wanted to purchase
 6 bonds?
 7 A. It was before.
 8 Q. So the first statement you heard was Nothern
 9 making this announcement about what he heard
 10 from Pete Davis?
 11 A. Correct.
 12 Q. At this point you are on the phone?
 13 A. Right.
 14 Q. All right. What's the -- after Nothern
 15 makes that statement, what's the next thing
 16 you observe?
 17 A. At this point, I'm on the phone and I'm
 18 already aware that the Treasury market is
 19 up.
 20 Q. You are seeing some information on your --
 21 A. I have a screen so I'm sort of like, oh, I'm
 22 on the phone. I'm thinking, "Something is
 23 going on," so...
 24 Q. When you say "the Treasury market is going
 25 up," what do you mean by that?

Page 111

1 A. I have a screen that has actual quotes and
 2 the 30-year Treasury bond is up. I don't
 3 know, three-quarters of a point. Something
 4 is happening.
 5 Q. All right. As you sit here today, do you
 6 know how much it was going up or it had gone
 7 up?
 8 A. I think it was three-quarters of a point.
 9 Q. After you see your screen and you see the --
 10 A. Right.
 11 Q. -- the bond going up, what's the next thing
 12 you recall happening?
 13 A. Well, then they're standing up and doing
 14 something, and then I -- that -- the Pete
 15 Davis discussion, and then they are doing
 16 the trade, and I'm saying, you know, "I
 17 could use 10 million."
 18 Q. So you are saying "they're standing up," you
 19 are referring to Steve Nothern --
 20 A. Steve Nothern --
 21 Q. -- and Rick Smith?
 22 A. And John Cadogan is taking instruction.
 23 Q. Is John Cadogan standing as well?
 24 A. I remember him sitting, but I don't know.
 25 Q. What's the discussion that's going on among

Page 112

1 Cadogan, Steve Nothern and Rick Smith at
 2 this point?
 3 A. It's figuring out a number. It's collecting
 4 orders to get to how many did we want to
 5 buy, to -- so John can go buy them.
 6 Q. Was there anybody who was taking the lead
 7 and trying to find out how much everybody
 8 wanted?
 9 A. I mean, not -- it seemed like Steve and Rick
 10 were putting it together.
 11 Q. All right. And did there -- after you
 12 observed this interaction between Nothern,
 13 Cadogan and Rick Smith, what's the next
 14 thing you recall occurring?
 15 A. John Cadogan executed, you know, the trade,
 16 bought 70 million Treasury bonds.
 17 Q. So, by this point, you had heard whatever
 18 Nothern wanted to purchase, whatever Rick
 19 Smith wanted to purchase and whatever David
 20 Kennedy wanted to purchase?
 21 A. Right.
 22 Q. And you told them, "I wanted to purchase 10
 23 million"?
 24 A. Right.
 25 Q. How exactly did you tell them that "I wanted

Page 113

1 to purchase 10 million"?
 2 A. I looked at John and said, "I will take 10."
 3 Q. When you say, "I will take 10," you were
 4 intending for him to purchase for you
 5 10 million Treasury bonds?
 6 A. That's correct.
 7 Q. You see, we will get this working out at
 8 some point today.
 9 After Mr. Nothern had made this
 10 statement about Peter Davis, did you engage
 11 in any discussion with anybody else about
 12 what exactly Davis had said or get any
 13 clarification or anything like that?
 14 A. No.
 15 Q. Did you engage in any conversation -- after
 16 you heard this statement that Nothern said
 17 about Davis, but before you asked Cadogan or
 18 anybody else to purchase 10 million, did you
 19 get involved in any other discussion with
 20 anybody there about what was going on?
 21 A. No.
 22 Q. Prior to you indicating to Cadogan that you
 23 wanted to purchase the 10 million in bonds,
 24 did you see anything on the news wires
 25 indicating that the Treasury refunding

Page 114

1 announcement had been released?
 2 A. No.
 3 Q. Had you received any e-mails or any
 4 information from anybody in which they
 5 indicated that the 30-year bond was going to
 6 be cancelled?
 7 A. No.
 8 Q. So the only information you had that morning
 9 that there may be a cancellation of the
 10 30-year bond was coming from Steve Nothern?
 11 MR. SHOPE: Objection.
 12 A. Correct, but there had been speculation for
 13 weeks about whether they would or not. I
 14 mean, it was...
 15 Q. And it had been speculation for --
 16 A. Wall Street Journal, right.
 17 Q. But the speculation had been going on for a
 18 couple of years --
 19 A. Right.
 20 Q. -- correct? And people thought because
 21 the --
 22 A. The surplus.
 23 Q. -- surplus the U.S. government was running,
 24 that they might cancel the 30-year bond?
 25 A. Right.

Page 115

1 Q. Right.
 2 A. Now we'll probably need the 50 years, 60
 3 years, 70 year and 80 year-bonds. I'm sorry
 4 I said that.
 5 Q. That's because the government is now running
 6 such huge deficits?
 7 A. Right. I won't do that again.
 8 Q. Did you ever -- were you working as a
 9 portfolio manager when there had been an
 10 announcement about a cancellation of the
 11 20-year bond?
 12 A. I don't remember that.
 13 MR. ROSSETTI: We can go off the
 14 record, take a quick break here.
 15 THE VIDEOGRAPHER: The time is
 16 11:50, and we are off the record.
 17 (A recess was taken from
 18 11:50 a.m. to 12:00 p.m.)
 19 THE VIDEOGRAPHER: The time is
 20 12 o'clock noon, and we are back on the
 21 record.
 22 Q. Mr. Kurinsky, when Mr. Nothern had made the
 23 statement that Davis had -- when he made the
 24 statement about what Davis had told him, did
 25 Steve Nothern mention anything about an

Page 116

1 embargo?
 2 A. No.
 3 Q. Did he mention that Peter Davis had just
 4 gotten out of a meeting?
 5 A. No.
 6 Q. Did he mention -- did Steve Nothern say that
 7 -- anything about Davis mentioning a press
 8 release was going to be issued?
 9 A. No.
 10 Q. Did Mr. Nothern mention that Peter Davis
 11 said the Treasury Department was going to
 12 make an announcement at 10 a.m.?
 13 A. No.
 14 Q. Did Mr. Nothern mention anything about TIPS,
 15 Treasury Inflation Protected Securities?
 16 A. No.
 17 Q. Did you make any mention of a buyback?
 18 A. No.
 19 Q. Did Mr. Nothern make any statement about
 20 five-year notes?
 21 A. No.
 22 Q. Did he mention -- did Steve Nothern mention
 23 that Peter Davis had mentioned the name
 24 "Peter Fisher"?
 25 A. No.

Page 117

1 Q. Now, you had discussed earlier this morning
 2 that you had provided some testimony to the
 3 Securities and Exchange Commission back in
 4 December of 2001; is that correct?
 5 A. That's correct.
 6 Q. When you provided that testimony to the
 7 Securities and Exchange Commission, was the
 8 testimony you provided under oath?
 9 A. It was.
 10 Q. And was that testimony subject to any
 11 penalty of perjury?
 12 A. I assume it was.
 13 Q. When you gave your investigative testimony
 14 in December of 2001, were the events of
 15 October 31, 2001 fresh in your mind?
 16 A. Yes.
 17 Q. Did your investigative testimony reflect
 18 your knowledge of the events of -- correctly
 19 reflect your knowledge of the events of
 20 October 31st correctly?
 21 A. You mean, in terms of written notes that
 22 came out of it?
 23 Q. No, no, no, no.
 24 A. Oh.
 25 Q. The testimony you were providing --

EXHIBIT E

**Cited Excerpts from the Deposition Transcript
of David Smith
(June 19, 2006)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Civil Action No.
05-10983 (NMG)

Plaintiff.

v.

STEVEN E. NOTHERN,

Defendant.

-----X
Volume I

June 19, 2006
New York, New York

Videotape deposition of DAVID R. SMITH, taken on
behalf of the Plaintiff, at the United States Securities and
Exchange Commission, WTC, 3 World Financial Center, Suite
4300, New York, New York, 10281, commencing at 10:20 a.m.,
June 19, 2006, before Anthony Armstrong, a Certified
Shorthand Reporter of the State of New York.

Page 2

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16 Also Present:

17 Juan Torres, videographer

Steven E. Nothorn

19

20

21

22

23

24

25

Page 4

1 Proceedings

2 THE VIDEOGRAPHER: This is tape number one
3 of the videotaped deposition of Mr. David R.
4 Smith, in the United States -- in the matter
5 of United States Securities and Exchange
6 Commission, Plaintiff, versus Steven E.
7 Nothorn, Defendant, in the United States
8 District Court for the District of
9 Massachusetts.

10 This deposition is being held at the SEC,
11 3 World Financial Center, New York, New York,
12 on June 19th, 2006, at approximately 10:20
13 a.m.

14 My name is Juan Torres from the firm of
15 Alderson Reporting, and I am the legal video
16 specialist.

17 Will counsel please introduce themselves
18 beginning with the party noticing this
19 proceeding.

20 MR. ROSSETTI: John Rossetti for the
21 Securities and Exchange Commission, plaintiff.

22 MS. WILLIAMS: Erica Williams for the
23 United States Securities and Exchange
24 Commission.

25 MR. THEODOROU: Nicholas Theodorou for the

Page 3

1 INDEX

2 WITNESS EXAMINATION BY PAGES

3 DAVID R. SMITH Mr. Rossetti 5, 278

Mr. Theodorou 248,

4 EXHIBITS

5 EXHIBIT NO. DESCRIPTION PAGES

6 DS-1 Notice 10

7 DS-2 Subpoena 10

DS-3 Floor plan 51

8 DS-4 Press release 109

DS-5 Calendar 119

9 DS-6 Transcript 125

DS-7 Printouts of Bloomberg terminal 125

10 DS-8 High grade trading letter 182

DS-9 Report 191

11 DS-10 Bloomberg message 206

DS-11 Response 207

12 DS-12 E-mail 207

DS-13 E-mail 215

13 DS-14 E-mail 217

14

15 (Whereupon, exhibits were retained
16 by Mr. Rossetti.)

17

18

19

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Page 5

1 defendant Steven Nothorn.

2 MR. GOLDSTEIN: And Richard Goldstein for
3 the witness Mr. Smith.

4 THE VIDEOGRAPHER: Will the court reporter
5 please swear in the witness.

6 DAVID SMITH, a witness, having first been duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ROSSETTI:

10 Q. Good morning, Mr. Smith. Could you state your
11 full name and spell it for the record.

12 A. Sure. My name is David Richard Smith, III.
13 That's D-A-V-I-D, R-I-C-H-A-R-D, S-M-I-T-H.

14 Q. And can you please state your Social Security
15 number.

16 A. 019-52-4761.

17 Q. And your present address, please.

18 A. 4 Mohawk Street, Rye, New York, 10580.

19 Q. What is your telephone number, present
20 telephone number?

21 A. Sure. 914-967-0104.

22 Q. Is that a home number?

23 A. Home number, yes.

24 Q. Do you have a cell number as well?

25 A. I do.

Page 138

1 MR. GOLDSTEIN: Yeah.
 2 MR. ROSSETTI: -- from the 9 a.m. meeting.
 3 MR. THEODOROU: Objection.
 4 A. I don't recall any specific conversations I
 5 had with Steve Nothern.
 6 BY MR. ROSSETTI:
 7 Q. Any general conversations you recall?
 8 A. No.
 9 Q. Did there come a point in time when you had
 10 any discussions with Mr. Nothern about the 30th year
 11 bond?
 12 MR. THEODOROU: When?
 13 MR. ROSSETTI: On October 31st, 2001.
 14 A. There was a point in time that I do recall
 15 Steve being back at the desk. I do recall him being
 16 next to me. I do recall something about Pete Davis and
 17 elimination of the bond.
 18 Q. When you say the bond, what do you mean, the
 19 long bond, the 30th year bond?
 20 A. The bond is industry -- industry terminology
 21 for the US Treasury 30th year long bond -- 30 year
 22 maturity bond.
 23 Q. You said that Steve Nothern was back at his
 24 desk?
 25 A. Uh-huh.

Page 139

1 Q. When you say back at his desks, is that -- let
 2 me hand you Exhibit 3.
 3 A. Uh-huh.
 4 Q. Are you referring to the area that's marked
 5 241 on Exhibit 3?
 6 A. Yes, I believe that's correct.
 7 Q. Was he away from his desk prior to that that
 8 you noticed?
 9 MR. THEODOROU: Objection.
 10 A. I believe he was.
 11 Q. Alright. What happened after he returned to
 12 his desk?
 13 A. I believe that he was -- the tough part about
 14 this is you don't know what's going on at that moment
 15 or what you'll learn later. But I believe he was
 16 either on the phone or checked his messages and then,
 17 you know, he stated there was kind a Pete Davis, bond
 18 elimination was part of the conversation.
 19 Q. Specifically, what did he state --
 20 MR. THEODOROU: Objection.
 21 Q. -- about Steve Nothern stating --
 22 A. I think I shared with you about the degree of
 23 precision that I can share about that matter.
 24 Q. Okay. And when he was making this statement
 25 about Pete Davis and elimination of the bond, where was

Page 140

1 he?
 2 A. I believe he was -- I believe he was at his --
 3 I believe Steve was at his trading station No. 241.
 4 Q. And was he sitting or standing in 241?
 5 A. I don't recall.
 6 Q. Let me have you turn back to Exhibit 6, which
 7 is the copy of your transcript.
 8 A. Okay.
 9 Q. And I will have you turn to page 59.
 10 A. Okay.
 11 Q. Let me know when you get to 59 and I will
 12 further direct you.
 13 A. Okay.
 14 Q. I want to have you start reading from line 11
 15 there. Do you see that?
 16 A. Yes.
 17 Q. Okay. And I will have you read down to the
 18 next page on page seven.
 19 A. From 59 to 60 on page seven?
 20 Q. That's correct.
 21 A. Can you remind me on page 59 what line I'm
 22 supposed to --
 23 Q. Line 11.
 24 A. Line 11?
 25 Q. Yes.

Page 141

1 A. To seven on 60?
 2 Q. That's correct.
 3 A. Okay.
 4 (Perusing.)
 5 Q. Actually I'm going to have you go down to line
 6 16 on 60.
 7 A. Okay.
 8 (Perusing.)
 9 Q. I'm sorry. I'm just going to have you read
 10 eight lines down further on 24. I apologize.
 11 A. Okay. Let's try again here.
 12 (Perusing.)
 13 Okay, I have read it.
 14 Q. Okay. You had testified that your
 15 recollection of what Mr. Nothern said was something
 16 about Pete Davis and elimination of the bond.
 17 After reading this section of the transcript
 18 that I just asked you to read -- you've read that, by the
 19 way?
 20 A. Yes, I have just read it.
 21 Q. Okay. I went just want to make sure that
 22 have.
 23 A. Yes.
 24 Q. After reading that section of the transcript,
 25 does it refresh your memory as to any other details of

Page 142

1 what Mr. Nothern said that morning?

2 A. I think the additional piece of information

3 was that they had just got out of some meeting which

4 seems like the piece of information I did not mention a

5 few moments ago.

6 Q. And after reading this transcript, that

7 refreshes your recollection as to that point?

8 MR. THEODOROU: Objection.

9 Q. I'm sorry?

10 A. I believe that's correct, yes.

11 Q. Okay. So when -- having read that transcript,

12 what is it you can recall now that Steve Nothern said

13 on October 31st, 2001?

14 A. Right. I think probably approximately the

15 same that I mentioned before: That, you know, there

16 was a kind of blurb about the bond elimination, Pete

17 Davis. You know I can't quote him directly of what

18 exactly he said.

19 Q. You can't quote --

20 A. -- to either me or the group. I cannot quote

21 Steve Nothern directly. I cannot even tell you that he

22 was speaking directly at me at that time. I do believe

23 that there was elimination, Pete Davis, bond.

24 You have refreshed my memory that it had

25 something to do with the meeting at that point in time,

Page 143

1 but I do remember what I have just shared with you.

2 Q. And what was your understanding as to what

3 that all meant?

4 MR. THEODOROU: Objection.

5 Q. -- of what --

6 A. Right.

7 Q. Steve Nothern had said to you, what was your

8 understanding of what that meant?

9 MR. THEODOROU: Objection.

10 A. Right. At that moment in time?

11 Q. Yes.

12 A. I don't recall it meaning a lot to me. I

13 recall -- you know, I recall hearing the information.

14 And, you know, I don't remember thinking, oh, wow,

15 that's like a really great new piece of information, or

16 something like that. I kind of heard it and didn't

17 really get too excited about it.

18 Q. Did you understand, though, that the substance

19 of it was that Pete Davis was indicating that the

20 thirty year bond was going to be eliminated?

21 MR. THEODOROU: Objection.

22 A. I think there had been talk in the marketplace

23 about the elimination of bond for an extended period of

24 time. It's kind of one of those old stories you

25 probably heard so many times and probably didn't

Page 144

1 believe it by the time you heard it.

2 Q. But what was your understanding as to the

3 substance of what Nothern was saying --

4 A. Right.

5 Q. -- about Pete Davis and the bond?

6 MR. THEODOROU: Objection.

7 A. What was the substance of what he was saying?

8 Q. Yes. What did you understand to be the

9 substance of what Steve Nothern was saying about Pete

10 Nothern -- Pete Davis --

11 A. Pete Davis, yes.

12 Q. -- and the thirty year bond?

13 MR. THEODOROU: John Nothern.

14 MR. ROSSETTI: I'm sorry?

15 MR. THEODOROU: John Nothern.

16 A. Are you talking about at that moment in time

17 what was I thinking about, or right now thinking about

18 it what are the possible interpretations to what you

19 are talking about?

20 Q. Putting yourself back in time on

21 October 31st, 2001, you said that you -- Steve Nothern

22 made a statement, Pete Davis, elimination --

23 A. Right.

24 Q. -- thirty year bond? And you also were

25 refreshed that Davis had just gotten out of the

Page 145

1 meeting --

2 A. A meeting or something, yeah, yeah.

3 Q. What did you --

4 A. Right.

5 Q. What was your understanding of what that meant

6 at that time, October 31st, 2001?

7 MR. THEODOROU: Objection, asked and

8 answered.

9 Q. You can answer.

10 A. Okay. I think at that there is some

11 recognition of what he was talking about, but there was

12 not a real revelation or tremendous amount of thought

13 gone into what was said.

14 Q. But what was your recognition of what he was

15 saying -- what Steve Nothern was saying?

16 MR. THEODOROU: Objection.

17 A. I don't know if I really --

18 Q. Well, did you --

19 A. Yeah --

20 Q. Steve Nothern mentions Pete Davis gets out of

21 the meeting and says that -- the thirty year bond is

22 going to be eliminated.

23 A. Uh-huh.

24 Q. What did you take that to mean?

25 MR. THEODOROU: Objection.

Page 162

1 MR. ROSSETTI: You could ask him on
2 cross-examination.

3 MR. THEODOROU: Clearly it says perhaps
4 likely --

5 MS. WILLIAMS: We read that part into the
6 record.

7 BY MR. ROSSETTI:

8 Q. Mr. Smith, the -- your decision to purchase
9 bonds, the 5 million bonds on October 31st, 2001 --

10 A. Yes.

11 Q. -- it was motivated for however percentile you
12 would want to assign it by -- in part by Mr. Nothern's
13 statement about P. Davis and elimination of the bond;
14 is that correct?

15 MR. THEODOROU: Objection.

16 A. I would not say it was motivated by Steve
17 Nothern's statement.

18 Q. You're saying by any degree?

19 A. I think that it was something that was
20 mentioned in the conversation. If something was talked
21 about in the room, it's very difficult to say it's
22 zero. But I would say if he had said that and the
23 market was trading down, you know, I wouldn't have
24 bought it, you know. The way I was looking at it was I
25 had a market that I was short that was running away

Page 163

1 from me and there was enough damage for something that
2 I really didn't understand what was going on.

3 I mean we're talking about an environment
4 that's October '01 after we went through September 11th
5 of '01. And I remember that -- one thing I do remember
6 is on 9 o'clock in the morning September 11th, '01 the
7 market traded up like crazy. From a pure portfolio
8 management standpoint, it was one of the best
9 opportunities to make money of that year because the
10 market was open and was trading up. So there were times
11 that there are things that go on in the marketplace that
12 technicals take over and starts running, you don't know
13 what's going on.

14 And I look backwards at that information in
15 September of '01 and said that be it nimble at that one
16 important time could have been something that made my
17 year. I mean as someone whose job is to look at the
18 portfolio, for all I know it could have been another
19 terrorist attack going on, you know.

20 Q. Are you stating here today that Mr. Nothern's
21 statement about elimination of the bond didn't play any
22 factor at all in your decision to purchase bonds on
23 October 31st, 2001 you'd told Catigan make it 65?

24 MR. THEODOROU: Objection.

25 MR. GOLDSTEIN: I'm going to object to

Page 164

1 that also.

2 A. Yes.

3 MR. ROSSETTI: We'll go off the record.

4 It's --

5 THE VIDEOGRAPHER: The time is 3:28 p.m.

6 This ends Tape No. 4 of the videotaped

7 deposition of Mr. David R. Smith.

8 (There was a recess.)

9 *****

10 THE VIDEOGRAPHER: The time is 3:40 p.m.

11 This begins Tape No. 5 of the videotaped

12 deposition of Mr. David R. Smith.

13 BY MR. ROSSETTI:

14 Q. Mr. Smith, did the statement from Mr. Nothern
15 about the elimination of the bond play any role in your
16 decision to buy 5 million bonds?

17 MR. THEODOROU: Objection.

18 A. I believe that it was something that was
19 discussed in the time period approximately associated
20 with the trading, and I think there were a large
21 variety of factors. I don't believe that it was
22 something I was thinking a lot about, but I do
23 recognize it was something that was mentioned in the
24 room, so I can't say it was zero, but I can also say
25 that it wasn't a major part of my decision-making

Page 165

1 process.

2 Q. Now, did the statement from Mr. Nothern about
3 the elimination of the bond, was it one of the factors
4 that entered into your decision to purchase
5 50 million -- 5 million in bonds?

6 MR. THEODOROU: Objection.

7 A. I would repeat the same response that I had
8 said to you in my previous response.

9 Q. You had mentioned that there was an extended
10 period of discussion about the elimination of the
11 thirty year bond.

12 Can you explain what you meant by that?

13 A. I don't recall there was an extended
14 discussion about the elimination of the thirty year
15 bond.

16 Q. Let me put this way: Prior to October 31st,
17 had you ever heard anything about the possible
18 elimination of the 30 year bond?

19 A. I believe there were rumors in the marketplace
20 about the possible elimination.

21 Q. Prior to October 31st, 2001, when was the last
22 time you had heard any rumors about the possible
23 elimination of the 30 year bond?

24 A. I don't recall.

25 Q. Upon hearing those other rumors about possible

Page 166

1 elimination of the 30 year bond, did you buy any bonds
2 as a result of hearing those rumors?

3 A. I don't recall.

4 Q. The rumors that you did hear prior to
5 October 31st, 2001, over what period of time did
6 they -- had you been hearing those?

7 A. I don't recall.

8 Q. Was it a matter of years you were hearing
9 this?

10 MR. THEODOROU: Objection, asked and
11 answered.

12 A. I don't recall. Yeah.

13 Q. Matter of months?

14 A. I don't recall specifically.

15 Q. Okay. You said there was -- when I was just
16 asking you questions about whether the Nothern
17 statement played a role, you had mentioned something
18 that there was a discussion.

19 What discussion were you referring to?

20 MR. THEODOROU: Objection.

21 A. I don't know what you are talking about.

22 Q. You had -- I thought you had said that there
23 was a discussion about the bond, and I was -- did I not
24 hear that correctly?

25 A. What you're saying is not triggering anything

Page 168

1 make it 65. I think it was -- I thought it was pretty
2 quick.

3 Q. So a few seconds perhaps?

4 MR. THEODOROU: Objection.

5 A. I would be speculating if I said anything more
6 than what I said I think.

7 Q. Well, after he said offer 60, did you sit
8 there contemplating it or did you immediately react and
9 say offer 65?

10 MR. THEODOROU: Objection.

11 A. I don't recall.

12 Q. After you said make it 65, what did you
13 hear -- did you hear Catigan actually offer 65?

14 A. He asked the salesperson on the line can you
15 make it 65.

16 Q. What was the response?

17 MR. THEODOROU: Objection.

18 A. I don't know. He was on the telephone with
19 the broker. I don't know what was being said on the
20 other end of the line.

21 Q. Did Mr. Catigan take any steps to acknowledge
22 that the -- he had gotten the offer in for the 65 --
23 acknowledge to you?

24 A. I think -- as I said before, what was going on
25 at that point in time was the market was really

Page 167

1 that we have talked about today.

2 Q. Okay.

3 A. Yes.

4 Q. Now, after you said to Mr. Catigan -- withdraw
5 that.

6 When you heard Catigan say -- state in his loud
7 voice buy 60 --

8 A. Offer 60.

9 Q. Offer 60. Where were you?

10 A. Sitting at my desk.

11 Q. And when you told Catigan make it 65, were you
12 seated? Did you stand up?

13 A. I don't recall.

14 Q. How did you communicate that to Catigan?

15 A. Verbally.

16 Q. Did you shout it out make it 65?

17 A. Correct.

18 Q. What's -- what happened after you said make it
19 65?

20 A. He -- I believe he asked the broker-dealer to
21 refresh the offering for an amount of 65 million.

22 Q. How long after he had said offer 60 did he
23 refresh his offer and say make it 65?

24 A. I think when he was saying can you offer me
25 60 million bonds, I kind of looked up and I said, John,

Page 169

1 starting to move up pretty rapidly. And I do recall
2 that there was -- you know, sometimes you look at
3 government bond markets, it will say 10 plus 11 on the
4 screen. You say offer a large amount of securities.
5 Say offer them at 11. And using my example, I have no
6 idea what the price was. This is illustrative.

7 I do recall a market that was moving, and I
8 don't think that Merrill Lynch, or whoever the broker
9 was, was very fast at making the offering. Typical in a
10 volatile market the trader is put at risk and they are
11 slower. They want the market to settle down before they
12 make the offering. And as I recall, the market was
13 rallying quite a bit that day. It was at a point where
14 he probably felt that I offer it at X price, by the time
15 you say done, it would be higher.

16 It was one of those times that things were just
17 moving on its own. So I do recall that John was -- John
18 was saying do you have an offering. So it wasn't -- it
19 wasn't like immediate, you know. It wasn't like a calm
20 market. It took some time.

21 Q. Did he get a confirmation, though, about the
22 65?

23 MR. THEODOROU: Objection.

24 Q. Catigan, that is.

25 A. I believe he was offered a price that I

Page 202

1 say it was not frequent, you know, like -- I would just
 2 like to leave it at that. Not frequent.
 3 Q. Was it once a year, twice a year, more often
 4 than that per year?
 5 MR. THEODOROU: Objection.
 6 A. I couldn't say the frequency. It's not
 7 something I kept track of. I --
 8 Q. Okay. At any time, October 31st, 2001, did
 9 you hear Nothern state anything that the information he
 10 got from Peter Davis, Peter Davis had gotten from Peter
 11 Fisher?
 12 MR. THEODOROU: Objection.
 13 A. I don't think I heard the word Peter Fisher
 14 that morning.
 15 Q. Did you hear the term embargo from Steve
 16 Nothern before you traded on October -- before you
 17 asked Catigan to increase the 65?
 18 A. No.
 19 Q. Did you hear the term embargo from Nothern at
 20 all that day?
 21 A. No.
 22 Q. Did you hear from Nothern that day that there
 23 would be -- that the information would be --
 24 information about the elimination of the bond would be
 25 released at 10 o'clock that day?

Page 203

1 A. No.
 2 Q. Did Nothern indicate anything to you that led
 3 you to believe that the information about the bond was
 4 confidential to a certain time?
 5 MR. THEODOROU: Objection.
 6 A. No.
 7 Q. Did Nothern say anything that the source of
 8 the information from Davis was the Treasury Department?
 9 MR. THEODOROU: Objection.
 10 A. No.
 11 Q. Did you come -- did you come to learn after
 12 you placed -- you told Catigan to increase the
 13 65 million how was it that Nothern had gotten
 14 information from Davis?
 15 MR. THEODOROU: Objection.
 16 A. Did I know?
 17 Q. Did you learn.
 18 A. When?
 19 Q. At any time after you told Catigan to place
 20 65 -- to order -- to offer 65. I'm sorry.
 21 A. After did I learn?
 22 Q. Yeah. At any point after you told Catigan
 23 offer 65 --
 24 A. Right.
 25 Q. -- did you learn how it was that Nothern got

Page 204

1 this information from Davis?
 2 MR. THEODOROU: Objection.
 3 Q. Peter Davis.
 4 MR. GOLDSTEIN: I would just caution the
 5 witness not to disclose any information you
 6 might have learned from counsel.
 7 THE WITNESS: Yeah.
 8 A. Sorry. A few distractions here.
 9 I -- can you repeat it one more time?
 10 Q. Yes. After you placed the -- or after you
 11 told Catigan offer 65 --
 12 A. Right.
 13 Q. Any time after that, did you learn how it was
 14 that Nothern got the information from Pete Davis the
 15 information --
 16 MR. THEODOROU: Objection.
 17 A. I believe there was -- I believe it was in the
 18 newspaper.
 19 Q. And what did you learn from the newspaper?
 20 MR. THEODOROU: Objection.
 21 A. I think the newspaper said that Davis had
 22 called a variety of people.
 23 Q. Did you learn if Nothern had actually spoken
 24 with Davis that important?
 25 MR. THEODOROU: Objection.

Page 205

1 A. I'm -- I don't know the answer to that
 2 question. I don't know if Steve talked to Pete Davis
 3 that day.
 4 Q. Do you know if he had received a voice mail
 5 from Pete Davis that day?
 6 MR. THEODOROU: Objection.
 7 A. My understanding that day that there was some
 8 communication between Pete Davis and Steve Nothern. I
 9 believe I was unsure of whether it was a phone call or
 10 a voice mail.
 11 Q. Did you -- at any time did you learn --
 12 A. At some point I did learn that it was a voice
 13 mail.
 14 Q. And from who -- I'm sorry.
 15 From whom did you learn that?
 16 MR. THEODOROU: Objection.
 17 A. I don't remember who it came from.
 18 Q. And what did you learn?
 19 MR. THEODOROU: Objection.
 20 A. What did I learn?
 21 Q. Yes. Was it a voice mail or did he actually
 22 speak with him? Did Nothern speak with Davis?
 23 A. I believe I learned it was a voice mail, yes.
 24 Q. Was that something that you learned from the
 25 newspaper article?

EXHIBIT F

**Cited Excerpts from the Deposition Transcript
of David Kennedy
(June 26, 2006)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

)
UNITED STATES SECURITIES AND)
EXCHANGE COMMISSION,)
Plaintiff,)
)
vs.)
)
STEVEN E. NOTHERN,)
Defendant.)

C.A. 05-10983 (NMG)

VIDEOTAPED DEPOSITION OF DAVID

KENNEDY, a witness called on behalf of the
Plaintiff, pursuant to the provisions of the
Massachusetts Rules of Civil Procedure,
before Jill Shepherd, Registered
Professional Reporter and Notary Public, in
and for the Commonwealth of Massachusetts,
at the offices of U.S. Securities and
Exchange Commission, 33 Arch Street, Boston,
Massachusetts, on Monday, June 26, 2006,
commencing at 10:18 a.m.

Page 2

1 APPEARANCES:
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 22 David Kennedy.
 23
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Page 3

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 2
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 9 On Behalf of the Defendant,
 10 Steven Nothern.
 11
 12
 13 ALSO PRESENT: RALPH SCOPA, VIDEOGRAPHER
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
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Page 4

1 INDEX
 2
 3 WITNESS: PAGE
 4 DAVID KENNEDY
 5 Examination by Mr. Rossetti 6, 116, 125
 6 Examination by Mr. Shope 102, 124
 7

8 EXHIBITS
 9 NO. DESCRIPTION PAGE
 10 1 Notice of Taking Deposition 5
 11 2 Subpoena 5
 12 3 2001 Investigative Testimony 5
 13 4 SECNOTH00130192 31
 14 5 SECNOTH00131647 52
 15 6 SECNOTH00131632-1637 87
 16
 17

(ALL EXHIBITS RETAINED BY MR. ROSSETTI)

Page 5

1 PROCEEDINGS
 2 (Exhibit Nos. 1-3 marked)
 3 THE VIDEOGRAPHER: We are now
 4 recording and on the record. My name is
 5 Ralph Scopa. I am a legal video specialist
 6 for G & M Court Reporters, Limited. Our
 7 business address is 42 Chauncy Street,
 8 Boston, Mass., 02111.
 9 Today's date is June 26, 2006. The
 10 time is 10:18 a.m. This is the deposition
 11 of David Kennedy in the matter of the
 12 Securities and Exchange Commission vs.
 13 Nothern, U.S. District Court, District of
 14 Massachusetts. Civil action: 05-10983
 15 (NMG).
 16 This deposition is being taken at the
 17 Securities and Exchange Commission,
 18 33 Arch Street, Boston, Mass.
 19 The court reporter is Jill Shepherd.
 20 Counsel will state their appearances and the
 21 court reporter will administer the oath.
 22 MR. ROSSETTI: John Rossetti for
 23 the Plaintiff, United States Securities and
 24 Exchange Commission.
 25 MS. WILLIAMS: Erica Williams for

Page 58

1 Q. Where was that TV?
 2 A. It was directly behind me.
 3 Q. And --
 4 A. Hanging from the ceiling.
 5 Q. Was that TV on during the workday?
 6 A. Yes.
 7 Q. Was the sound up on it?
 8 A. No.
 9 Q. Did you use the TV to get -- as a source of
 10 information during the course of your
 11 workday?
 12 A. Not often.
 13 Q. Did you glance up at it occasionally during
 14 a workday?
 15 A. Rarely.
 16 Q. Do you know who did, if anybody?
 17 A. No.
 18 Q. Okay. Was it tuned to any particular
 19 channel?
 20 A. Yeah.
 21 Q. What channel was that?
 22 A. I believe it was MSNBC. I think that's what
 23 it was. Anyone could have changed the
 24 station and I would not have known it.
 25 Q. Well, if there were guys present in the room

Page 59

1 and there was a remote control, I'm sure
 2 somebody was changing it, right?
 3 A. Whenever there was golf, it would have been
 4 on.
 5 Q. In your time in the industry, have you taken
 6 any professional exams?
 7 A. Yes.
 8 Q. What professional exams?
 9 A. I held my series 7 from 1985, I think, 1987.
 10 Q. What was a series 7?
 11 A. It's the -- you will know this better than
 12 I. It's the broker's, you know, sales
 13 license.
 14 Q. Did you have any other professional exams
 15 that you passed?
 16 A. There was one other that went with it, and I
 17 don't remember the designation.
 18 Q. Series 65?
 19 A. 65.
 20 Q. And what did a series 65 do?
 21 A. I don't remember.
 22 Q. Were there any others that you have taken?
 23 A. No.
 24 Q. Do you have a series 65?
 25 A. Not prior to October 31st.

Page 60

1 Q. After October 31st?
 2 A. Yes.
 3 Q. What have you taken?
 4 A. With my current employer, I took the -- Oh,
 5 series 55, 53. Something like that. We
 6 don't really use it, so I have to kind of
 7 take it and forget about it.
 8 Q. Okay. On October 31, 2001, you said you
 9 looked over your -- let me withdraw that.
 10 You indicated that your typical day at work,
 11 you'd come in and you'd look at the
 12 portfolios and see that the trades were
 13 done.
 14 Would you make any determination
 15 during the course of the day that you had
 16 funds that you wanted to invest that day?
 17 MR. SHOPE: I'm sorry, could I have
 18 the question reread.
 19 (Question read.)
 20 A. Yes.
 21 Q. When, during the course of the day, would
 22 you make that determination?
 23 A. I would be -- watch how much cash was
 24 available in each portfolio and whether I
 25 thought it was too little or too much.

Page 61

1 Q. On October 31, 2001, had you made any
 2 determination of how much cash you had?
 3 A. I only remember from what I have read in my
 4 transcript that there was cash available.
 5 Q. Okay. If you didn't have cash available,
 6 would you be able to make purchases?
 7 A. Yes.
 8 Q. And how would you pay for those purchases if
 9 you didn't have cash available?
 10 A. I could sell something else.
 11 Q. I see. On October 31, 2001, did you hear
 12 information about the Treasury Department's
 13 30-year bond?
 14 A. Yes.
 15 Q. All right. When was the first time you
 16 heard anything about the Treasury
 17 Department's 30-year bond on October 31,
 18 2001?
 19 A. When Steve Nothern said he had heard the
 20 Treasury was going to eliminate the 30-year
 21 Treasury.
 22 Q. And did he say who he heard that from?
 23 A. I think my memory was better when I gave my
 24 first deposition, and I think according to
 25 that it was that Pete Davis had told him

Page 62

1 that the Treasury was going to eliminate the
 2 30-year Treasury.
 3 Q. Did you know -- well, approximately what
 4 time was it that Steve Nothern made this
 5 statement?
 6 A. Again, I'd have to refer to my transcript.
 7 Q. Okay.
 8 A. I just don't remember.
 9 Q. All right. Why don't you go ahead and do
 10 that and let me see if I can help you with
 11 the page.
 12 A. (Witness reading.)
 13 Q. Well, you know, on that specific question,
 14 we're going to come back to that --
 15 A. Okay.
 16 Q. -- and just move on to some other questions
 17 regarding that.
 18 When -- as you sit here today, what do
 19 you recall is it that Steve Nothern said?
 20 A. Again, my memory has been refreshed by the
 21 transcript that, you know, Steve said, you
 22 know, "I heard from Pete Davis that the
 23 Treasury was going to eliminate the 30-year
 24 Treasury."
 25 Q. And had you -- prior to Steve Nothern making

Page 63

1 this statement, had you ever heard the name
 2 Pete Davis?
 3 A. No.
 4 Q. And referring to Exhibit 4, can you indicate
 5 for me on that exhibit where Steve Nothern
 6 was when he made that statement?
 7 A. I remember Steve standing roughly behind
 8 Rick Smith's position.
 9 Q. Let me hand you a pen and write the initials
 10 "SN" for Steve Nothern, where he was.
 11 A. Okay. (Witness complies.)
 12 Q. Okay. And you've just circled that?
 13 A. I have.
 14 Q. We'll have the record reflect that the
 15 witness has drawn in the initials "SN" and
 16 circled it in the station between Nothern
 17 and Smith, a little closer to Smith's
 18 location.
 19 MR. SHOPE: May I take a look at
 20 that.
 21 MR. ROSSETTI: Sure.
 22 Q. And was he standing at that location?
 23 A. Yes.
 24 Q. Just prior to Mr. Nothern making that
 25 statement, what were you doing?

Page 64

1 A. I don't remember.
 2 Q. Where were you just prior to Nothern making
 3 that statement?
 4 A. I was sitting at my station.
 5 Q. And that would have -- as you look at
 6 Exhibit 4, that would have been station 243?
 7 A. Yes.
 8 Q. What would you say the approximate distance
 9 from where you have noted Steve Nothern was
 10 to where you were?
 11 A. 10 feet.
 12 Q. And how loud was the statement; you know,
 13 what level of voice did he make that
 14 statement in?
 15 A. It was loud enough for me to hear it.
 16 Q. When you heard it, did you hear it well or
 17 did it seem faint to you?
 18 MR. SHOPE: Objection.
 19 A. It was clear.
 20 Q. Okay. What did you do when you heard that
 21 statement?
 22 A. I don't remember specifically what I did
 23 after. A conversation ensued about the
 24 Treasury and what we should do.
 25 Q. A conversation ensued between whom?

Page 65

1 A. Steve Nothern, Rick Smith, Geoff Kurinsky,
 2 myself. That's what I remember.
 3 Q. And what did you -- what was stated during
 4 this discussion?
 5 A. What we should do. Whether we should buy or
 6 not buy the Treasury, the 30-year Treasury.
 7 Q. What did you say?
 8 A. I don't remember specifically what...
 9 Q. Did Steve Nothern say anything?
 10 A. I do recall at one point saying, "Well, what
 11 are we going to do?" Or "What are you going
 12 to do?" And, you know, Steve saying, "I'm
 13 going to buy the Treasury" --
 14 Q. When you say --
 15 A. -- "the 30-year Treasury."
 16 Q. Okay. The 30-year Treasury bond, is that --
 17 A. Yes.
 18 Q. Did Smith say anything?
 19 A. At some point, he put in an order to buy --
 20 Q. Smith?
 21 A. -- Smith put in an order to buy the 30-year
 22 Treasury bond with John Cadogan.
 23 Q. Do you know how many Rick Smith put in an
 24 order with Cadogan?
 25 A. I don't remember.

Page 74

1 A. Yes.
 2 Q. Does that refresh your memory as to anything
 3 else that Steve Nothern stated about who
 4 Peter Davis was?
 5 A. Yes. I think it's a fair recollection of
 6 the comments.
 7 Q. And with your memory now refreshed, what
 8 else is it that Nothern stated about Davis?
 9 A. What it says in here, well-connected in
 10 Washington, served on the committees, and
 11 this is what I remember.
 12 Q. Okay. After you placed the order with John
 13 Cadogan, did you get any acknowledgment from
 14 Cadogan that the trade had been placed and
 15 executed?
 16 MR. SHOPE: Objection to the form.
 17 A. I don't remember specifically, but he
 18 probably told us at what level he bought
 19 them, at what price.
 20 Q. How soon after you placed the order did you
 21 get an acknowledgment from Nothern [sic]
 22 that the trade had been placed?
 23 MR. SHOPE: Objection.
 24 A. Do you mean John Cadogan?
 25 Q. John Cadogan, I'm sorry.

Page 75

1 MR. SHOPE: Note my objection.
 2 A. I doubt much time passed. I don't remember
 3 specifically.
 4 Q. I withdraw that. Actually, there's nothing
 5 to withdraw.
 6 Are you familiar with a system at MFS
 7 called the "fixed-income trading system"?
 8 A. Yes.
 9 Q. And can you tell me what that system was at
 10 MFS?
 11 A. It was an online portfolio management tool
 12 where you could access your portfolios'
 13 security holdings and you could -- it was
 14 the instrument by which you traded.
 15 Q. And who created that system?
 16 A. I believe it was MFS-created internally.
 17 Q. And, excuse me, in order to have a trade
 18 executed, did you need to have information
 19 put in this fixed-income trading system
 20 before any action could be done on a trade?
 21 A. In theory, you were supposed to enter the
 22 trade through the FITS system. It would
 23 then go to the traders and the traders would
 24 see it and then execute the trade.
 25 Q. How did it work in practice?

Page 76

1 A. In practice, most often, that's the way it
 2 worked, but it was not uncommon -- John
 3 Cadogan sat directly across from me -- that
 4 I would say, "John buy X and I'm putting it
 5 in the system right now."
 6 Q. When you made this order, you told Cadogan
 7 to purchase 25 million bonds. At that
 8 point, did you put the information into the
 9 FITS system?
 10 A. I don't remember putting it in the system
 11 immediately.
 12 Q. Okay. Did you do it sometime that day?
 13 A. Yes.
 14 Q. When was it that you put it in the system
 15 that day?
 16 A. I didn't remember until I saw a document
 17 that it was sometime after 10 o'clock. Now,
 18 part of why I didn't put it in was because
 19 there was a portfolio manager not on the
 20 desk, that was Peter Vaream. We -- after
 21 placing our trades, we then kind of looked
 22 around and said, "Peter is not here. Peter
 23 would want some of the 30-year Treasury." I
 24 had put in an order for 25, but then decided
 25 to give Peter two. So eventually I only put

Page 77

1 in an order into the FITS system for \$23
 2 million.
 3 Q. At any point on October 31st did you have a
 4 conversation with Peter Vaream about you
 5 reserving two million of your 25 million
 6 purchase for his accounts?
 7 A. Yes.
 8 Q. What did you and he discuss?
 9 A. I don't remember the specifics. It was some
 10 time later he returned to the desk and he
 11 was made aware of the purchases.
 12 Q. You have been recounting to us that Steve
 13 Nothern had gotten up and made this
 14 statement and there was some discussion and
 15 you purchased bonds. Did you relay that to
 16 Vaream?
 17 A. I don't remember.
 18 Q. The -- prior to October 31, 2001, had you
 19 heard any information that the Treasury may
 20 be cancelling the 30-year bond?
 21 A. Yes.
 22 Q. When did you hear that information?
 23 A. This had been an ongoing story for 12 or 18
 24 months, that it was financially feasible
 25 that the Treasury would cancel or eliminate

Page 78

1 the 30-year Treasury as the government
 2 surplus -- it actually was a surplus -- at
 3 one point, the Treasury yield curve was flat
 4 and it just didn't make sense to issue
 5 30-year bonds. So it had been discussed in
 6 different strategy pieces. It had been
 7 discussed at Harbor Capital before I went to
 8 MFS.
 9 Q. You mentioned that there was a government
 10 surplus. A government surplus of what?
 11 A. That they were taking in more revenues than
 12 they were spending.
 13 Q. The good old days, right?
 14 A. Good old days.
 15 Q. And you mentioned this yield curve. What do
 16 you -- when you said "yield curve," what are
 17 you talking about?
 18 A. The "yield curve" is nothing but a graphical
 19 representation of the Treasury yields going
 20 from the 90-day T-bill to the 30-year, and
 21 if you graph it along a plot, you have the
 22 yield curve.
 23 Q. So would it be fair to say as a result of
 24 the government surplus, it was one of the
 25 things that was driving this discussion

Page 79

1 about the elimination of the bond, 30-year
 2 bond?
 3 MR. SHOPE: I'm sorry, can I have
 4 that reread?
 5 (Question read.)
 6 MR. SHOPE: Objection to the form.
 7 I don't think that's really a question.
 8 MR. ROSSETTI: Yeah.
 9 Q. So was it this discussion about -- or the
 10 fact that the government was running
 11 surpluses, budget surpluses, was that one of
 12 the factors that was driving this discussion
 13 about the potential cancellation of the
 14 bond?
 15 A. Yes.
 16 Q. Now, when Nothern made this statement that
 17 he had heard from Davis that the bond was
 18 going to be eliminated, what was his tone of
 19 voice?
 20 A. Matter of fact.
 21 MR. GOLDSTEIN: By that, you mean
 22 Nothern's tone of voice?
 23 MR. ROSSETTI: Nothern's tone of
 24 voice.
 25 A. Yes.

Page 80

1 Q. Nothern's voice was matter of fact?
 2 A. Yes.
 3 Q. Did there come a point in time on October
 4 31, 2001 that you learned that the Treasury
 5 had actually announced that they were going
 6 to cancel the 30-year bond?
 7 A. Yes.
 8 Q. When was that?
 9 A. I recall that John Cadogan announced that it
 10 had appeared on the Treasury website.
 11 Q. What time was it that John Cadogan made that
 12 announcement?
 13 A. I don't remember.
 14 Q. Did John Cadogan state if he had gone to the
 15 website to see for himself?
 16 A. I don't remember if he did himself.
 17 Q. And did John Cadogan state where he had
 18 learned that information?
 19 A. I don't remember.
 20 Q. Did you go visit the Treasury Department's
 21 website?
 22 A. No, I did not.
 23 Q. Did John Cadogan make that statement before
 24 you placed the order for the bonds?
 25 A. It was after.

Page 81

1 Q. How much after you placed the order for the
 2 bonds did Cadogan make that statement?
 3 A. I don't remember.
 4 Q. Was it a matter of minutes?
 5 MR. SHOPE: Objection.
 6 A. Well, minutes, 20 minutes, five minutes? I
 7 mean, I don't remember. It was after the
 8 orders were placed.
 9 Q. Okay. When you heard from -- when you heard
 10 Cadogan make the statement that the
 11 cancellation of the bond or elimination of
 12 the bond was posted on the Treasury website,
 13 did you connect that at all with the
 14 statement that Nothern had made earlier?
 15 A. Yes.
 16 Q. And what connected it in your mind?
 17 A. I guess it's true.
 18 Q. When Nothern made this statement that he had
 19 heard from Peter Davis that the Treasury was
 20 going to eliminate the bond, did he mention
 21 the name Peter Fisher?
 22 A. Not that I remember.
 23 Q. On October 31, 2001, prior to you placing
 24 the trade, did you know who Peter Fisher
 25 was?

Page 82

1 A. Yes.
 2 Q. Who was Peter Fisher?
 3 A. To the best of my recollection, Peter Fisher
 4 at one time worked for the Treasury in
 5 New York City, made some headlines with the
 6 Long-Term Capital Management hedge fund
 7 issue, and then at some point his career
 8 moved from the New York office to
 9 Washington.
 10 Q. Do you know if he was with the Treasury
 11 Department or the Federal Reserve?
 12 MR. SHOPE: Objection.
 13 A. I thought he was with the Treasury.
 14 Q. So the morning of October 31, 2001, you knew
 15 that Peter Fisher was a member of the
 16 Treasury Department?
 17 A. I think if someone had asked me about him I
 18 would have said he works for the Treasury.
 19 Q. I see. And you didn't hear Peter Fisher's
 20 name mentioned that morning by Steve
 21 Nothern?
 22 A. I don't recall hearing his name that day.
 23 Q. Did Steve Nothern mention anything in this
 24 statement that he heard from Davis, the bond
 25 was going to be eliminated, did he mention

Page 83

1 anything about a press release?
 2 A. No, not that I remember. No.
 3 Q. Did Steve Nothern mention anything about a
 4 10 a.m. announcement?
 5 A. When he stood up and made his statement to
 6 the trading desk?
 7 Q. Yes.
 8 A. No.
 9 Q. Did he make a statement that there was going
 10 to be a 10 a.m. announcement at any point
 11 that morning?
 12 A. Not that I remember. Again, I only say that
 13 he may have mentioned something at the
 14 9 o'clock meeting and I just -- I don't
 15 remember.
 16 Q. When Steve Nothern had stood up and made the
 17 statement that Pete Davis indicated -- he
 18 heard from Pete Davis that the Treasury was
 19 going to eliminate the bond, did Steve
 20 Nothern mention anything else that indicated
 21 to you that the information that he was
 22 providing was confidential?
 23 MR. SHOPE: Objection.
 24 A. No.
 25 Q. Did he say anything at that point indicating

Page 84

1 that the information was nonpublic?
 2 A. No.
 3 Q. Did he mention the term "embargo" at all?
 4 A. No.
 5 Q. Did you hear the term "embargo" from Steve
 6 Nothern on October 31, 2001?
 7 A. No.
 8 MR. ROSSETTI: If we can go off the
 9 record.
 10 THE VIDEOGRAPHER: Off the record
 11 at 12:02.
 12 (Short recess.)
 13 THE VIDEOGRAPHER: The time is
 14 12:04. This is the end of cassette one. We
 15 are off the record.
 16 (Short recess.)
 17 THE VIDEOGRAPHER: The time is
 18 12:14. This is the beginning of cassette
 19 two in the deposition of Mr. David Kennedy.
 20 We are on the record.
 21 (Pause.)
 22 Q. Mr. Kennedy, you indicated that you placed a
 23 \$25 million trade with Cadogan for the
 24 bonds. In relation to other bond trades you
 25 have made for the 30-year Treasury bond,

Page 85

1 where was this trade in order of magnitude
 2 compared to others?
 3 A. It was one of my larger trades.
 4 Q. Did you typically trade blocks of \$25
 5 million in Treasury bonds?
 6 A. No.
 7 Q. Why did you place such a large trade on this
 8 particular occasion?
 9 A. The answer to your question: I thought the
 10 news was significant enough to warrant a
 11 larger position -- a larger single trade.
 12 In the past, I would have broken the trades
 13 down into smaller pieces, whereas the -- so
 14 if you added my trades up throughout a day
 15 or even two-day period, it would have been
 16 more than 25 million.
 17 Q. I see.
 18 A. Another factor is the funds had grown over
 19 the last -- it's a two-year period that I
 20 managed them, so you had to buy increasingly
 21 larger pieces.
 22 Q. Did you -- you said Nothern placed a trade,
 23 you placed a trade, you thought Smith and
 24 Kurinsky did as well. Did you all place
 25 individual trades or did you aggregate it

EXHIBIT G

**Cited Excerpts from the Deposition Transcript
of Steven Nothern
(January 30, 2007)**

Volume: I

Pages: 1-221

Exhibits: 1-10

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

(Boston Division)

Civil Action No. 05-CV-10983 (NMG)

- - - - -

UNITED STATES SECURITIES AND EXCHANGE

COMMISSION,

Plaintiff,

v.

STEVEN E. NOTHERN,

Defendant.

- - - - -

Deposition of Steven E. Nothern

January 30, 2007

9:19 a.m. - 4:00 p.m.

Securities and Exchange Commission

33 Arch Street

Boston, Massachusetts

Reporter: Daria L. Romano, RPR/CRR

Page 2

1 A P P E A R A N C E S:

2 UNITED STATES SECURITIES AND
3 EXCHANGE COMMISSION

4 (by Erica Y. Williams,
5 Assistant Chief Litigation Counsel;
6 John J. Rossetti, Jr., Senior Counsel
7 Division of Enforcement)
8 100 F Street, N.E.
9 Washington, D.C. 20549-4010
10 (202) 551-4450
11 williamse@sec.gov
12 rossettij@sec.gov
13 for the Plaintiff.

15 FOLEY HOAG, LLP

16 (by Nicholas Theodorou, Esq. and
17 John Shope, Esq.)
18 155 Seaport Boulevard
19 Boston, Massachusetts 02210
20 (617) 832-3061
21 jtheodorou@foleyhoag.com
22 jshope@foleyhoag.com
23 for the Defendant.

25 ALSO PRESENT: Ian McWilliams, Videographer

Page 4

1 P R O C E E D I N G S

3 THE VIDEOGRAPHER: Here begins
4 videotape number one in the deposition of Steven
5 Nothorn in the matter of the United States
6 Securities Exchange Commission versus Steven
7 Nothorn in the United States District Court for
8 the District of Massachusetts, Civil Action
9 05-CV-10983 (NMG).

10 Today's date is January 30th, year
11 2007. The time on the video monitor is 9:19
12 a.m.

13 The video operator today is Ian
14 McWilliams of New England Trial Services
15 contracted by Jones Reporting Company.

16 This deposition is taking place at the
17 offices of the SEC, 33 Arch Street, Boston,
18 Massachusetts.

19 Counsel, please voice identify
20 yourselves and state whom you represent.

21 MS. WILLIAMS: Erica Williams,
22 United States Securities and Exchange
23 Commission.

24 MR. ROSSETTI: John Rossetti for
25 the plaintiff, US Securities and Exchange

Page 3

1 I N D E X

2 Deposition of: Page
3 STEVEN E. NOTHERN
4 By Ms. Williams 6

7 E X H I B I T S

8 No.	Page
9 1 Notice of deposition	8
10 2 Transcript	9
11 3 Statement of Guidelines With Respect	
12 to Receipt and Use of Material	
13 Nonpublic Inside Information	69
14 4 Floor plan	81
15 5 David Capital Investment Ideas	111
16 6 E mail	131
17 7 E mail	135
18 8 Treasury News document	148
19 9 Answers to interrogatories	166
20 10 Mass. Financial Services Department	
21 Report from 10/31/2001 to 10/31/2001	182

23 *Original exhibits returned to Ms. Williams

Page 5

1 Commission.

2 MR. THEODOROU: Nicholas Theodorou
3 for the defendant, Steven Nothorn.

4 MR. SHOPE: John Shope for the
5 defendant, Steven Nothorn.

6 THE VIDEOGRAPHER: The court
7 reporter today is Daria Romano of Jones
8 Reporting Company.

9 Would the reporter please swear in the
10 witness.

12 STEVEN E. NOTHERN DULY SWORN

14 THE VIDEOGRAPHER: Please begin.

15 MR. THEODOROU: Before we start, we
16 will talk about the stipulations.

17 MS. WILLIAMS: Absolutely. The
18 same stipulations that we've had in the other
19 depositions, all objections, except as to the
20 form of the question, are reserved, including
21 motions to strike.

22 MR. THEODOROU: Reserved until the
23 time of trial.

24 MS. WILLIAMS: Yes.

25 MR. THEODOROU: Fine.

Page 162

1 Q. Was he talking to all of the people
2 that you mentioned when he made this statement?

3 A. This is a statement -- this was an
4 exchange between the two of us. Others could
5 well have overheard it.

6 Q. So Mr. Cadogan was just talking -- was
7 directing the statement to you?

8 A. As I recall, we were looking at each
9 other, maybe six feet apart having that -- and
10 he added that piece of information that they
11 were having a quarterly refunding announcement,
12 and it was at ten o'clock.

13 Q. Was there anyone else that Mr. Cadogan
14 was directing that statement to beside you?

15 MR. THEODOROU: Objection.

16 A. I'm uncertain who he was trying to
17 address it to. I know he was addressing it to
18 me. I was chatting with him. I think he was --
19 well, it was a general comment he was making, so
20 I know he was addressing it to me.

21 Q. Do you know if anyone else overheard
22 the comment that Mr. Cadogan made?

23 MR. THEODOROU: Objection.

24 A. No.

25 Q. Was there a 9 a.m. meeting for the

Page 163

1 Fixed Income Group on October 31, 2001?

2 A. I don't recall specifically a 9 a.m.
3 meeting that day.

4 Q. So just to clarify, you don't recall
5 attending a 9 a.m. meeting that day?

6 A. I don't.

7 Q. Do you recall participating in any
8 telephone calls that morning, October 31, 2001?

9 A. Yes.

10 Q. What telephone calls do you recall
11 participating in?

12 A. I remember receiving a phone call from
13 one of our dealers.

14 Q. Which dealer?

15 A. I don't remember. One of my principal
16 government coverage guys. I can't remember
17 specifically which one.

18 Q. Do you recall where the dealer worked?

19 A. I don't recall specifically which
20 dealer it was. So the answer to that question
21 is no.

22 Q. What line did this call come in on?

23 A. I don't remember.

24 Q. Would it -- did it come in on a direct
25 line versus your personal line?

Page 164

1 A. Not my personal line but possibly a
2 direct -- possibly one of the general phone
3 lines on our phone turret.

4 Q. Who called whom?

5 A. I received the phone call from one of
6 the dealers.

7 Q. Approximately what time did you
8 receive this call?

9 A. Some time between 9:30 and ten
10 o'clock.

11 Q. What was discussed during this call?
12 I'm sorry.

13 A. Ordinarily some time between 9:30 and
14 10 of, quarter of.

15 MR. ROSSETTI: 10 of 10?

16 THE WITNESS: Yeah, yes.

17 BY MS. WILLIAMS:

18 Q. What did you discuss during this call?

19 A. The broker was calling me to discuss
20 that the market had been moving, and he had a
21 possible explanation for it.

22 He had heard talk that people on the
23 Chicago Board of Trade thought that the long
24 bond was going to be cancelled, and he was
25 imparting that as a possible explanation for why

Page 165

1 the market was drifting up that morning.

2 Q. Do you know who on the Chicago
3 Board -- excuse me.

4 Do you know how the person that you
5 were talking to learned about this information
6 on the Chicago Board of Trade?

7 A. No.

8 Q. Did the person you were talking to
9 work at this Chicago Board of Trade?

10 A. I don't believe so.

11 Q. Did the person you were talking to
12 characterize the information, where you called
13 it talk, on the Chicago Board of Trade as a
14 rumor?

15 A. Yeah, yes.

16 Q. Do you recall if this person told you
17 anything else during the conversation?

18 A. That's all I can recall.

19 Q. Prior to this conversation, what, if
20 anything, had you noticed about the market?

21 A. The market had been ticking up that
22 morning.

23 Q. And specifically what market are you
24 referring to?

25 A. The bond market. Specifically, the

Page 166

1 long bond had been moving up that morning at
2 that point in time at least a quarter point with
3 eight, 10 ticks.

4 Q. And you said that this call came in
5 between 9:30 and 9:50?

6 A. Some time after 9:30. I don't know
7 exactly what time.

8 Q. Was it around 9:30?

9 A. I don't know exactly what time.

10 MS. WILLIAMS: I'd like to have
11 this marked as Exhibit 9.

12 (Exhibit 9 marked
13 for identification)

14 MR. SHOPE: Are there any
15 particular numbers you're going to be referring
16 to?

17 MS. WILLIAMS: I'm going to be
18 talking about page five.

19 BY MS. WILLIAMS:

20 Q. Do you recognize this document,
21 Mr. Nothern?

22 A. Yes.

23 Q. What is it?

24 A. It's labeled Defendant Steven E.
25 Nothern's Responses to the Plaintiff US

Page 167

1 Securities and Exchange Commission's First Set
2 of Interrogatories.

3 Q. If I could refer you to page 15. And
4 on the second half of the page, do you see your
5 signature there, sir?

6 A. Yes.

7 Q. And it says, "I, Steven E. Nothern,
8 state under the penalty of perjury that the
9 foregoing responses are true and correct."

10 Did I read that correctly?

11 A. Yes.

12 Q. Okay. On page five, I'm at the first
13 line, "Around 9:30 a.m. on October 31, 2001, I
14 had a telephone conversation with a bond broker
15 who informed me that there was information
16 circulating on the Chicago Board of Trade that
17 the Treasury was going to cancel the issuance of
18 the 30-year bond and that Treasury was going to
19 shift to a monthly issuance of five-year bonds
20 rather than the quarterly issuance of five-year
21 bonds."

22 Did I read that correctly?

23 A. Yes.

24 Q. Does that refresh your recollection at
25 all of anything else that was discussed during

Page 168

1 the conversation with the broker that morning?

2 A. Yes.

3 Q. What else was discussed?

4 A. Apparently Treasury was going to shift
5 to a monthly issuance of five years as opposed
6 to a quarterly issuance.

7 Q. And you agree that the conversation
8 took place around 9:30 a.m.?

9 A. Yes.

10 Q. Prior to receiving this call, what, if
11 anything, had you heard regarding Treasury's
12 possible cancellation of a 30-year bond on
13 October 31st?

14 A. Prior to October 31, 2001?

15 Q. No, no. On October 31st, prior to
16 receiving this call, what, if anything, had you
17 heard about the possible cancellation of the
18 bond, just on that day?

19 A. That morning?

20 Q. Yes.

21 A. Nothing that I recall.

22 Q. What did you say in response to the
23 broker's -- information that the broker gave you
24 during this call?

25 A. I don't recall.

Page 169

1 Q. What was your reaction to this
2 information?

3 A. It was twofold. One is here we go
4 again. We'd had a similar thing at the
5 August refunding.

6 And then it jogged my memory of what
7 had happened at the quarterly refunding, which
8 there had been wide anticipation at that point
9 in time that the treasurer was going to announce
10 the cancellation of the 30-year Treasury bond.

11 Their arrangements that they were
12 making was that it just didn't make sense to
13 continue issuing them.

14 So there was an expectation in
15 August that they were going to announce the
16 cancellation. So I did remember that.

17 And I did remember also that the
18 postmortem on -- because they didn't in fact
19 announce that in August, postmortem was that
20 they didn't do it because the fellow in charge
21 while nominated hadn't yet been confirmed, and
22 he might not yet have the -- I guess the sort of
23 official ability to stand before the cameras and
24 make that sort of an announcement, to the extent
25 that he wanted to be the guy making that sort of

Page 170

1 announcement.

2 Q. Do you recall if you'd received any
3 calls from brokers prior to the August refunding
4 conference?

5 A. I don't recall.

6 Q. When you say that a similar thing had
7 happened at the August refunding, what do you
8 mean?

9 A. That there was a lot of talk about
10 whether they were going to do it or not do it in
11 terms of whether they were going to cancel
12 issuance of 30 years or not do it. So there was
13 a lot of speculation about that.

14 This is an issue that had been
15 outstanding for a long period of time, well over
16 a year, and it dated to the prior
17 administration.

18 And in a sense the prior
19 administration, this is my take on it, that sort
20 of punted and left the issue to the new
21 administration.

22 Q. How did you become aware of the talks
23 surrounding the August refunding?

24 A. It was very -- I don't recall
25 specifically. It was very widely talked about,

Page 171

1 though.

2 Q. Prior to the August refunding
3 conference, do you recall there being any
4 movement in the market on the morning of the
5 conference?

6 A. I don't.

7 MR. SHOPE: I'm sorry, can I have
8 that question and answer read back?

9 (Record read)

10 MR. SHOPE: Okay. Thank you.

11 BY MS. WILLIAMS:

12 Q. In the course of your work at MFS, how
13 often would you receive calls of this nature,
14 meaning the call that you got from the broker on
15 the morning of October 31st --

16 MR. THEODOROU: Objection.

17 Q. -- regarding rumors about market
18 activity?

19 MR. THEODOROU: Objection.

20 A. Rarely.

21 Q. Do you not agree that you frequently
22 got calls from individuals with rumors regarding
23 what the market was going to do?

24 MR. THEODOROU: Objection.

25 A. What was your question? Cow could you

Page 172

1 just repeat that, please?

2 Q. Sure. I said did you not frequently
3 get calls from individuals with rumors regarding
4 what the market was going to do?

5 A. You're confusing me with your notes.

6 Q. Okay. Would you agree that you
7 frequently got calls from individuals with
8 rumors regarding what the market was going to
9 do?

10 A. No. I think it was extremely rare.

11 Q. If I could refer you to Exhibit 2,
12 page 118.

13 MS. WILLIAMS: And if we could go
14 off the record and change the tape.

15 MR. THEODOROU: Can we just take a
16 short break?

17 MS. WILLIAMS: Sure.

18 THE VIDEOGRAPHER: This marks the
19 end of videotape number two in the deposition of
20 Steven Nothern.

21 Going off the record, 2:32 p.m.

22 (Recess taken)

23 THE VIDEOGRAPHER: Here begins
24 videotape number three in the deposition of
25 Steven Nothern.

Page 173

1 On the record, 2:49 p.m.

2 BY MS. WILLIAMS:

3 Q. Mr. Nothern, if you could read to
4 yourself on Exhibit 2, page 117, line 19 through
5 page 119, line --

6 A. I'm sorry, page?

7 Q. 117.

8 A. Okay.

9 Q. Line 19 through page 118, line 8, and
10 let me know when you finished.

11 (Pause)

12 A. Okay.

13 Q. I wanted to refer you to page 118, and
14 I'm reading line four. "It's just the nature of
15 business. We have people calling us frequently
16 pounding the table that they're sure XYZ is
17 going to happen, or they're sure you should do
18 XYZ."

19 And I wanted to know what you meant by
20 that statement.

21 A. We have people -- well, when I worked
22 in the business there were people calling
23 frequently, our insurer, the curve was going to
24 flatten, which is jargon to say that the
25 Treasury market yields with change in a certain

Page 174

1 manner, or that the Fed was at the next meeting
2 going to tighten 50 basis points, or that the
3 next CPI number was going to be .8.

4 You know, so we had people calling in
5 all the time who thought that, you know, they
6 had an analysis of how the market might react to
7 things that they were certain were going to
8 occur in their analysis, in their opinion
9 certain things were going to happen, and they
10 were darn sure of it.

11 At the end of the day, I think I say
12 that here, at the end of the day, we as
13 portfolio managers have to make our own analysis
14 of what we think, you know, the investment
15 environment is going to be going forward, and we
16 take the responsibility for structuring the
17 portfolios appropriately.

18 You can't rely on other people's
19 analysis. It's useful input. Often they're
20 darn sure, but they can also be darn wrong. And
21 if it's wrong, it's your responsibility as a
22 portfolio manager.

23 I don't blame them, but they call a
24 lot confident that such-and-such is going to
25 happen and, you know, you should do

Page 175

1 such-and-such, you know, as a consequence of it.

2 Q. When you received this call from the
3 broker saying that -- relaying the rumor on the
4 floor of the Chicago Board of Trade, you said
5 that one reaction you had was that this was
6 similar to information you heard surrounding the
7 August refunding conference; is that right?

8 A. Yes.

9 Q. What, if anything, in your --
10 triggered in your mind after you received the
11 call from the broker on October 31st as to
12 whether Treasury was going to make a refunding
13 announcement that day?

14 A. It didn't -- I didn't have any thought
15 of a refunding -- quarterly refunding at that
16 point in time.

17 Q. How long did the call with the broker
18 last?

19 A. I don't remember. It was brief.

20 Q. By "brief," can you give me a
21 ballpark?

22 A. Less than two, three minutes.

23 Q. What happened -- what did you do after
24 you had this call with the broker?

25 A. As I recall, I was doing portfolio

Page 176

1 work. I had several portfolios I was working to
2 restructure. I was doing trades, primarily
3 selling intermediate maturity or short maturity
4 notes and bonds in exchange for longer
5 maturities.

6 Q. Okay. You mentioned earlier you
7 received a voicemail from Peter Davis. Were you
8 doing this portfolio work prior to receiving
9 that voicemail?

10 A. Yes.

11 Q. Did you sell any intermediate
12 securities that day prior to receiving the
13 voicemail from Mr. Davis?

14 A. Yes.

15 Q. Did you purchase any longer term
16 securities that day prior to receiving the
17 voicemail from Mr. Davis?

18 A. No.

19 Q. What do you recall happening next?

20 MR. SHOPE: Next after what?

21 MS. WILLIAMS: He said that after
22 the call with the broker, he did some portfolio
23 work. I want to know what he recalls doing
24 thereafter.

25 A. At some point I was interrupted by

Page 177

1 Kathy Graham who was our receptionist. She had
2 an issue related to a laptop that was going to
3 be picked up for servicing by Dell.

4 Q. How were you interrupted by
5 Ms. Graham?

6 A. She came to my desk and presented me
7 the problem that we were having, and Dell was to
8 come pick up this computer for servicing, and
9 she explained to me the complexity.

10 After 9/11, vendors -- pick up
11 companies were no longer allowed up into the
12 building, so the laptop would have to be brought
13 down to, I guess, a receiving area of the lobby.

14 Q. Okay. How long was this conversation
15 with Miss Graham?

16 A. I don't remember. I'd say it was
17 fairly brief, a few minutes.

18 Q. Besides you and Ms. Graham, was there
19 anyone else involved in this conversation?

20 A. No.

21 Q. And just to clarify, were you sitting
22 at your station on the high grade trading desk
23 when you had this conversation with Ms. Graham?

24 A. Yes.

25 Q. What happened after you had this

EXHIBIT H

**Cited Excerpts of Exhibit 3 from the
Deposition Transcript
of Bloomberg LP, by Patrick Eldridge
(November 2, 2006)**

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<HELP> for explanation, WORKING ON DEVELOPMENT SYSTEM SD20 t M-Mkt TBLT
Enter 2 <GO> to cancel, 99 <GO> for options. 0 <PAGE> to see original sales tkt.

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As of 10/31/01 09:42:02

GALEN APPROVED TICKET
T 5³ 02/15/31

H2633

SELL		65M (m)	
Price	102-24 ¹ / ₂	Yield	5.189718(Yield to 02/15/31 at 100.00)
Settlement	11/01/01		
A Account	81730A26	81730A26 MASS FINANCIAL SERVICES	Sales 817-9584

Sales Commission	CodeC	Rate	.150	9750.00 USD
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FC #	9584	NOE	DELIV INST
SETT TYPES	DAC		DELIV INST

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Accrued	(78)	740,523.10	
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Total	USD	67,538,179.35	

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606314

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Hong Kong 852 2977 6000 Japan 81 3 3201 8900 Singapore 65 6212 1000 U.S. 1 212 318 2000 Copyright 2006 Bloomberg L.P.
6230-82-3 07-Sep-06 15:30:10

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EXHIBIT I

**Cited Excerpts from the Deposition Transcript
of Galen Criqui
(September 27, 2006)**

1

2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

3

4

UNITED STATES SECURITIES)
5 AND EXCHANGE COMMISSION,)

)

6 Plaintiff,)

) Civil Action

7 vs.)

) No. 05-10983 (NMB)

)

8 STEVEN E. NOTHERN,)

)

9 Defendant.)

-----)

10

11

12

13 VIDEOTAPED DEPOSITION OF GALEN CRIQUI

14 New York, New York

15 Wednesday, September 27, 2006

16

17

18

19

20

21

22

23

24 Reported by:

Elia E. Carrion

25 JOB NO. 7530

<p style="text-align: right;">Page 2</p> <p>1 2 September 27, 2006 3 10:01 a.m. 4 5 Videotaped Deposition of 6 GALEN CRIQUI, held at the offices of 7 Davis Polk & Wardwell, 450 Lexington 8 Avenue, New York, New York, pursuant to 9 Amended Notice, before Elia E. Carrion, 10 a Notary Public of the State of New 11 York. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 A P P E A R A N C E S : (Cont'd) 3 4 ALSO PRESENT: 5 Rudolfo Duran, Legal Video Specialist 6 Julian Swearenguin, Merrill Lynch 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 2 A P P E A R A N C E S : 3 4 UNITED STATES SECURITIES AND EXCHANGE 5 COMMISSION 6 Division of Enforcement 7 Attorneys for Plaintiff 8 100 F Street, N.E. 9 Washington, D.C. 20549-4010 10 BY: ERICA Y. WILLIAMS, ESQ. 11 -and- 12 JOHN J. ROSSETTI, JR., ESQ. 13 14 FOLEY HOAG LLP 15 Attorneys for Defendant 16 Seaport World Trade Center West 17 155 Seaport Boulevard 18 Boston, Massachusetts 02210-2600 19 BY: ROBERT E. TOONE, ESQ. 20 21 CLIFFORD CHANCE US LLP 22 Attorneys for Witness 23 31 West 52nd Street 24 New York, New York 10019-6131 25 BY: KEVIN M. FUMAI, ESQ.</p>	<p style="text-align: right;">Page 5</p> <p>1 2 IT IS HEREBY STIPULATED AND AGREED, 3 by and among the attorneys for the 4 respective parties herein, that filing 5 and sealing be and the same are hereby 6 waived. 7 IT IS FURTHER STIPULATED AND AGREED 8 that all objections, except as to the 9 form of the question, shall be reserved 10 to the time of the trial. 11 IT IS FURTHER STIPULATED AND AGREED 12 that the within deposition may be sworn 13 to and signed before any officer 14 authorized to administer an oath, with 15 the same force and effect as if signed 16 and sworn to before the Court. 17 18 19 20 21 22 23 24 25</p>

2 (Pages 2 to 5)

Page 182

1 G. Criqui
 2 willing to sell bonds at par 21.
 3 It might only be one million, it
 4 might be 10 million, they might have 50
 5 million offered there.
 6 Q. So is it safe to say the difference
 7 the bid and the offer is the difference
 8 between the price at which someone in the
 9 market is going to buy a bond and the price
 10 at which someone in the market is going to
 11 sell the bond?
 12 A. Yes.
 13 Q. You had mentioned par in your
 14 answer.
 15 Could you explain what par is?
 16 A. Par, basically, is a hundred. And
 17 that's basically when the market, the present
 18 yield or interest rate in the marketplace
 19 coincides with the coupon --
 20 Q. Or interest rate?
 21 A. -- on the underlying -- or the
 22 interest rate on the underlying whole bond.
 23 So for instance, in
 24 February of 2001 they issued this 5 and
 25 three-eighths at Feb 31 as a 30-year bond.

Page 183

1 G. Criqui
 2 At the time of this trade, the
 3 October -- by October of '01, eight,
 4 nine months later, it had rallied roughly 18,
 5 19 basis points. So the bond went from 100
 6 par to 102, almost 103, 102.24 plus, that's
 7 close to 103. That reflects the fact that
 8 the market has rallied.
 9 So basically par is just when the
 10 present yield, present interest rate on the
 11 bond is the same as the coupon, the
 12 underlying interest rate on the bond when it
 13 was originally issued.
 14 Q. So when you say par in 20, is that
 15 120 ticks --
 16 A. Thirty -- yes, that's correct.
 17 Q. Which would be 120.32.
 18 A. 120 thirty-secondths. Not a
 19 hundred -- it's a little less than 101.
 20 Q. Right, 132 thirty-secondths --
 21 A. Would be 101.
 22 Q. Would be 101, okay.
 23 Sorry. I know that this is very
 24 basic.
 25 A. No, I don't even know the answers.

Page 184

1 G. Criqui
 2 Q. Mr. Toone asked you to go through
 3 the process that you generally went through
 4 at Merrill Lynch, when you executed a trade
 5 with a customer in Boston like MFS. I want
 6 to walk through what actually occurred on
 7 October 31st, 2001, regarding this trade of
 8 65 par value of 30-year bonds.
 9 Could you tell me what you recall
 10 on that morning?
 11 A. Certainly, certainly. I'll refrain
 12 from using the actual time at which it took
 13 place, 'cause five years later I can't really
 14 remember.
 15 But at some point before the
 16 expected 10 a.m. refunding announcement,
 17 anywhere from 15 to 20 minutes before that,
 18 Greg Saint-Pierre used the government's
 19 squawk while he's in Boston, I'm in Jersey
 20 City on a temporary basis. He used the
 21 government squawk, Galen, pick up Boston for
 22 a trade.
 23 I proceeded to press the Boston
 24 direct, hey, Greg. Hey, Galen, offer 65
 25 million long bonds to MFS for regular

Page 185

1 G. Criqui
 2 settlement.
 3 And I can't exactly recall where
 4 the bond market, where the bond was in the
 5 broker screens at the time, where the bid and
 6 offer was, but it was probably pretty close
 7 to where I did the trade. So anyway, let's
 8 say there were 102.23, 102.24, which is
 9 probably accurate, but I offered him at
 10 102.24 plus, a plus concession for me,
 11 plus --
 12 Q. A plus is --
 13 A. A half a tick.
 14 Q. -- a half of a thirty-secondth.
 15 A. Yes, one 64th.
 16 Q. Great.
 17 A. I offered a 24 plus, which was
 18 fair, market was pretty volatile at the time
 19 all that September 11th, and I offered him
 20 there. Greg reflects that to the customer,
 21 and within a second or two Greg comes back to
 22 me, you're done, customer accepts. I go
 23 okay, you're done, too, okay, fine. Trade's
 24 done. Like millions of trades I've done
 25 before.

47 (Pages 182 to 185)

Page 186

1 G. Criqui
 2 Q. At the time that you executed this
 3 trade, what, if anything, did you know about
 4 treasury's decision to cancel the 30-year
 5 bond?
 6 A. At the time of the execution of the
 7 trade, zero.
 8 Q. What, if any, rumors had you heard
 9 that morning about the possibility of the
 10 bond being cancelled?
 11 A. I hadn't heard one word, one rumor.
 12 Q. What, if any, indication did you
 13 get by the market that morning, prior to this
 14 trade, that there might be a cancellation of
 15 the bond?
 16 A. Zero.
 17 Q. Had --
 18 A. Sorry.
 19 Q. Had you been looking at the market
 20 for the 30-year bond, before you executed
 21 this trade?
 22 A. Oh, yeah.
 23 Q. What happened -- what did you
 24 proceed to do, after you said done?
 25 A. I -- standard practice is I would

Page 187

1 G. Criqui
 2 slate the trade, but I'm not required to
 3 slate the trade. There's not like a rule
 4 that I have to slate it the second it's done.
 5 Q. When you say "slate the trade" --
 6 A. Remember, we were talking about
 7 that before, when I actually input it into my
 8 system, what I did.
 9 Q. Okay.
 10 A. You know, where I put sell 65 bonds
 11 at 102.24 plus to NOE.
 12 Q. In the Bloomberg?
 13 A. In my Bloomberg trading system,
 14 yeah. I have to do that at some point, but
 15 it's not like I have to do it immediately.
 16 It's not like that slate gets done the second
 17 we verbally commit to this trade with the
 18 customer.
 19 Q. Okay.
 20 A. So I don't know exactly when I
 21 slated it with regard to this trade. It was
 22 probably pretty soon thereafter, but not
 23 immediately.
 24 But what I proceeded to do then was
 25 try to get some bonds back, and I did; I got

Page 188

1 G. Criqui
 2 roughly 30, 34 million back, at a profit,
 3 small profit, maybe a tick, tick and a half
 4 lower.
 5 And then, you know, when he was
 6 referring before, you know, basically, what,
 7 could you have gotten them all back, why
 8 didn't you buy 65 million, that's kind of
 9 like, that's why, you know, that's why I have
 10 a job. If it was just where you could offer
 11 65 bonds and just buy 65 million back, there
 12 really wouldn't be a need for me or anyone to
 13 do this job, you know. It's not very liquid,
 14 there's not a lot of offers, there's not a
 15 lot of bids for these things, they move
 16 around a lot, not a lot of people want to
 17 trade them. So I was lucky to get half of
 18 them back; and you know, I still had 15
 19 minutes before this refunding announcement.
 20 And refunding announcement is, you know,
 21 they're not earth-shattering things. They
 22 never have been, you know. So you know,
 23 maybe, maybe I'll go a little bit short into
 24 it.
 25 But all of a sudden well before the

Page 189

1 G. Criqui
 2 10 o'clock, I'd say about 9:45, 9:46, there
 3 was no offer, and it started to tick up a
 4 little bit, it got a little, a little weird,
 5 you know, but whatever. It happens, you
 6 know. And then all of a sudden it got really
 7 weird, you know.
 8 Q. Okay. Let me ask some follow-up
 9 questions.
 10 First, did you proceed to put your
 11 slate in while you were still on the phone
 12 with --
 13 A. No.
 14 Q. -- with Greg Saint-Pierre?
 15 A. I mean I can't answer that
 16 accurately, but most likely not. I usually
 17 just don't do that. I guess I'm not that
 18 talented, where I can do both at the same
 19 time. But I would probably -- I'm not on the
 20 phone with Greg for very long, and I don't
 21 know if the customer is going to say done
 22 either. Offer is 65 bonds, 102.24 plus,
 23 done, okay, then, then you're off the phone.
 24 So if I maybe started to slate it
 25 while at the end of the phone call, sure, but

EXHIBIT J

**Cited Excerpts from the Deposition Transcript
of Verizon Business, by Anne Wilson
(October 6, 2006)**

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

(Boston Division)

- - - - - x

UNITED STATES SECURITIES AND)

EXCHANGE COMMISSION,)

Plaintiff,)

v.) Civil Action

STEVEN E. NOTHERN,) No. 05-10983

Defendant.) (NMG)

- - - - - x

Washington, D.C.

Friday, October 6, 2006

Video 30(b)(6) Deposition of:

ANNE LAWRENCE WILSON,

a witness called for examination in the
above-entitled action, beginning at 10:14 a.m.

before JOE W. STRICKLAND, RPR, CRR, a notary
public in and for the District of Columbia, taken
at the offices of the Securities and Exchange
Commission, 100 F Street, NE, Washington, DC
20549, when were present:

Page 2

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

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JOHN J. ROSSETTI, JR.

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Page 3

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11 ALSO PRESENT: Conway Barker, Videographer

13 C O N T E N T S

14 WITNESS NAME

EXAMINATION

15 ANNE WILSON

16 By Ms. Williams 6, 180, 199

17 By Mr. Toone 117, 192

18 Afternoon Session 117

Page 4

1 E X H I B I T S

2 WILSON EXHIBIT NO.:

PAGE NO:

3 No. 1 11

4 No. 2 11

5 No. 3 26

6 No. 4 38

7 No. 5 46

8 No. 6 54

9 No. 7 61

10 No. 8 85

11 No. 9 109

12 No. 10 201

Page 5

1 P R O C E E D I N G S

2 VIDEOGRAPHER: In the United States

3 District Court for the District of Massachusetts,

4 in the matter of the United States Securities and

5 Exchange Commission versus Steven E. Nothern,

6 Case Number 05-10983 (NMG). This is the

7 corporate deposition of Verizon by Anne Wilson.

8 Today's date is October 6th, 2006. The

9 location of the deposition is the U.S. Securities

10 and Exchange Commission, 100 F Street, Northeast,

11 Washington, D.C.

12 Will Counsel please identify themselves

13 and state whom you represent.

14 MS. WILLIAMS: Erica Williams for the

15 Plaintiff, U.S. Securities and Exchange

16 Commission.

17 MR. TOONE: Robert Toone from Foley

18 Hoag, LLP, in Boston, Massachusetts, for the

19 Defendant, Steven Nothern.

20 MR. SCHULMAN: Todd Schulman, Verizon

21 Communications, Inc.

22 VIDEOGRAPHER: The court reporter is

Page 78

1 Q. So a host name corresponds to a
2 computer, an IP address?

3 A. Exactly. Right. So it was the IP
4 address that was in the access control list, but
5 the computer can look one up and find the other.
6 It knows which belongs to which.

7 Q. And would the host name be unique to a
8 specific computer at Treasury?

9 A. Not necessarily. They could have gone
10 through a proxy. But it would definitely be
11 coming through the Treasury gateway.

12 Q. I want to move down to the next entry
13 here: "Here are the CMS push logs for USTPRESS"
14 and then I see a clump of information. What is
15 all that?

16 A. That would be the logs and it shows the
17 logs that this user or that for this web site.
18 It shows when files were updated. They happen in
19 pairs, each update sequence. There's an update
20 collection and then do update. That's because a
21 number of things can happen, happen in a push and
22 it can take -- it can take several seconds or in

Page 79

1 some cases even minutes to do a push because the
2 system has to compare which files are on the two
3 systems and compare information about those
4 files.

5 Q. So here which, if any, of these push
6 logs relate to this particular file, PO749?

7 A. The second set. So starting with the
8 third entry, USTPRESS, that's the user name of
9 the web site. And then 9:43 and 23 seconds is
10 the beginning of the process. And then 9:43 and
11 28 seconds is the end of the process.

12 Q. When you say the beginning of the
13 process and that started at 9:43 and 23 seconds,
14 what do you mean?

15 A. Of the update process. I think I
16 referred before the user clicks a button and says
17 I want to push these documents to production.
18 And then it does the -- well, first of all it has
19 to get the Kerberos ticket and the two servers
20 have to open up that encrypted line of
21 communication. And then there is a comparison of
22 which files are on each of the two servers and

Page 80

1 the date, time, size of those files. And CMS
2 decides which files it's going to copy over and
3 then it does the copy.

4 Q. Does the program do this automatically
5 when the person clicks whatever they need to do
6 to say push?

7 A. Clicks the button; right.

8 Q. What is this fourth entry here, the
9 9:43:28? What does that signify?

10 A. That would be when the process was
11 completed. Or when that file was actually moved.

12 Q. At what time would someone from the
13 public who logs onto the Treasury production
14 server via the Internet be able to view PO749?

15 MR. TOONE: Objection.

16 THE WITNESS: 9:43 and 28 seconds.

17 BY MS. WILLIAMS:

18 Q. And why do you say that?

19 A. Because this log indicates that that's
20 when the CMS system was complete with its
21 transfer, which would mean that the file was then
22 on the production server.

Page 81

1 Q. Would it have been possible at 9:43 and
2 23 seconds to view the information on the
3 production server?

4 A. No.

5 Q. Why not?

6 A. The process was just starting. The
7 file wouldn't have been copied yet. And those
8 other things had to happen first.

9 Q. If you could go down below the copy --
10 well, first, this -- these entries from the log,
11 which server would those have come from?

12 A. I would have looked for them myself on
13 the staging server. That's where the interface
14 was for the customers to view these logs.

15 Q. Was it also available on the production
16 server?

17 A. It may have been. I personally don't
18 know.

19 Q. Okay. Below this information with the
20 CMS push logs, Mr. Harris writes some other
21 information interpreting the logs. Do you see
22 that?

Page 82

1 A. Uh-huh.
 2 Q. Is there anything in that that you
 3 disagree with?
 4 A. No, not at all. This is he's pulled
 5 out, you know, just copied bits and pieces of
 6 it. What -- what looks odd is that this
 7 101103107 is -- computers have a different way of
 8 keeping time. They don't use month, day, year.
 9 So it's -- I don't know what the algorithm is.
 10 It is like a number of seconds past some start
 11 date. So he's converted this numeric set of
 12 strange numbers into the actual year, month, and
 13 date that they convert to.
 14 Q. Was it possible for someone to type in
 15 WWW.TREAS.GOV and connect to Treasury's staging
 16 server?
 17 A. No.
 18 Q. Why not?
 19 A. Because that entry would have only been
 20 made for the production system.
 21 Q. Were there any other WWW. type
 22 addresses that connected to the production

Page 83

1 server? At Treasury?
 2 A. Yes. The WWW.USTREAS.GOV and
 3 WWW.TREASURY.GOV.
 4 Q. And would all of those connect to the
 5 same IP address on the production server?
 6 A. Right. There would have been multiple
 7 domain name entries, all with the same IP
 8 address.
 9 Q. What is a domain name?
 10 A. Domain name is that host's name. It
 11 refers to the DNS, domain name system, which is
 12 another protocol of how the Internet works. And
 13 there are servers, databases around the world
 14 that match up domain names with IP addresses.
 15 And it's the domain name that you're going to
 16 write in your web browser, because people
 17 wouldn't be expected to know what the IP
 18 addresses are. They're a little too confusing.
 19 Q. Do you know if Treasury's staging
 20 server had a domain name in 2001?
 21 A. No, I don't know. We did not create
 22 one for that.

Page 84

1 Q. UUNET didn't create one?
 2 A. Right.
 3 Q. So just to clarify, an IP address like
 4 Treasury's production server's IP address could
 5 have multiple domain names --
 6 A. Uh-huh.
 7 Q. -- that pointed to it?
 8 A. Right.
 9 Q. Are you familiar with the term network
 10 time protocol?
 11 A. Yes.
 12 Q. What is it?
 13 A. It's a standard throughout the
 14 Internet. It's a method of synchronizing clocks
 15 that's considered very robust and redundant, so
 16 that no one is depending on a single clock but on
 17 a network of clocks going back to very
 18 authoritative sources.
 19 Q. When you say it's a standard throughout
 20 the Internet, what do you mean?
 21 A. It's common, accepted practice that the
 22 official clocks from U.S. Naval Observatory or

Page 85

1 the National Institute of Standards and
 2 Technology distribute their time via NTP. And it
 3 syncs up with the universal coordinated time
 4 worldwide. So it's universally accepted.
 5 Q. Did UUNET have an NTP protocol in place
 6 for its customer servers?
 7 A. Yes, we did. That was a standard
 8 package that was installed on all of our customer
 9 boxes.
 10 Q. Was that true in the fall of 2001?
 11 A. Yes, it was.
 12 Q. Did UUNET have an NTP protocol in place
 13 for the Treasury servers that it maintained?
 14 A. Yes.
 15 Q. Could you explain how the NTP --
 16 actually, before you do that, let me mark this
 17 document as an exhibit.
 18 (Wilson Exhibit No. 8 was
 19 marked for
 20 identification.)
 21 BY MS. WILLIAMS:
 22 Q. Ms. Wilson, do you recognize this

Page 178

1 protocol was running at the time?

2 A. He would have done a process command to
3 see what processes were running.

4 Q. Was there any process that Mr. Harris
5 could have performed on November 1st at 12:40
6 p.m. as to whether the network time protocol was
7 running correctly on the morning of October 31st,
8 2001?

9 MS. WILLIAMS: Objection.

10 THE WITNESS: No.

11 BY MR. TOONE:

12 Q. I'm sorry?

13 A. Perhaps log files may have shown that.

14 Q. Are you aware of any evidence showing
15 that -- showing whether the network time protocol
16 was running correctly on October 31st, 2001?

17 A. Not direct -- I'm not sure. How did
18 you phrase that?

19 Q. Are you aware any of evidence that
20 shows whether or not the network time protocol
21 was functioning correctly on October 31st, 2001?

22 MS. WILLIAMS: Objection.

Page 179

1 THE WITNESS: I have no evidence to the
2 contrary. And the server was working. By
3 inference, it was.

4 BY MR. TOONE:

5 Q. What do you mean the server was
6 working?

7 A. CMS was working. The server was up and
8 responding. The operating system was running and
9 NTP is part of the operating system.

10 Q. So because the other functions were
11 working, it's possible to conclude that the
12 network time protocol was also working?

13 A. It certainly should have been.

14 Q. It should have been, but can you say
15 for sure that it was?

16 MS. WILLIAMS: Objection.

17 THE WITNESS: Not for absolutely sure,
18 but with a high degree of certainty, yes.

19 MR. TOONE: Could we take a short
20 break. I would like to review my notes one more
21 time.

22 VIDEOGRAPHER: Off the record,

Page 180

1 3:15:20.

2 (Recess.)

3 VIDEOGRAPHER: On the record at

4 3:33:58.

5 BY MR. TOONE:

6 Q. Ms. Wilson, I'm done with all my

7 questions for now. Thank you very much.

8 FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFF

9 BY MS. WILLIAMS:

10 Q. I have a couple of follow-up

11 questions.

12 A. Okay.

13 Q. Mr. Toone asked you some questions

14 about the ability of someone in the public to
15 view content on Treasury's staging server?

16 A. Uh-huh.

17 Q. What would a person need to know to
18 view, rather than post, content on Treasury's
19 staging server?

20 A. They would need to know that address.

21 The IP address of that staging server.

22 Q. And how would someone in the public

Page 181

1 know the IP address of a staging server?

2 MR. TOONE: Objection.

3 THE WITNESS: I don't know how they
4 could come by that information.

5 BY MS. WILLIAMS:

6 Q. Why do you say that?

7 MR. TOONE: Objection.

8 THE WITNESS: Because to my knowledge,
9 it was not part of the DNS record or announced in
10 that way.

11 BY MS. WILLIAMS:

12 Q. When you say not part of the DNS
13 record, what do you mean?

14 A. That I know of no -- well, even to know
15 the IP address they would have to know the domain
16 name, or they would have to know the domain name
17 to know the IP address. They would have to know
18 that address. It wouldn't have been posted on
19 the Treasury web site, for example.

20 Q. I think you testified that you don't
21 know if there was a domain name for Treasury's
22 staging server?

Page 198

1 files posted on the staging server were available
2 on the Internet?

3 MS. WILLIAMS: Objection.

4 THE WITNESS: Yeah. I mean it said
5 that, you know, if you want to protect your
6 content, you can do XYZ to keep others from
7 viewing it.

8 BY MR. TOONE:

9 Q. Did you produce those documents to the
10 S.E.C.?

11 A. No, I don't believe we discussed that.

12 Q. Are those documents still available?

13 A. Perhaps.

14 Q. Would it surprise to you learn that
15 Treasury's senior counsel for technology policy,
16 a man named Steven Vagle, believed that files
17 transferred to the staging server were not
18 available on the Internet?

19 MS. WILLIAMS: Objection.

20 MR. SCHULMAN: Objection.

21 BY MR. TOONE:

22 Q. You can answer if you understand the

Page 200

1 these files off the staging server on the
2 Internet?

3 A. They would have -- to view the files?

4 Q. Yes.

5 A. They would have to know the IP address
6 of the staging server. They would have to -- if
7 a domain name existed, they could use that. But
8 that's only if that existed. They'd have to know
9 one or the other. And you know depending on how
10 the files were indexed, they might have to know
11 specific file name to view that file.

12 Q. What if Treasury had additional
13 security protocols?

14 MR. TOONE: Objection.

15 THE WITNESS: In that case, they would
16 either have had to enter a user name password or
17 come from a specific network or range of IP
18 addresses.

19 BY MS. WILLIAMS:

20 Q. Did UUNET advertise which of its
21 clients had staging servers?

22 A. No.

Page 199

1 question.

2 A. I don't know. I mean I have no
3 opinion.

4 Q. Do you know whether Treasury employees
5 received any specific training on this aspect of
6 the staging server?

7 MS. WILLIAMS: Objection.

8 THE WITNESS: I don't know.

9 MR. TOONE: That's all I have.

10 MS. WILLIAMS: I have a couple
11 follow-ups.

12 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFF

13 BY MS. WILLIAMS:

14 Q. You never worked at the Department of
15 Treasury, did you Ms. Wilson?

16 A. No.

17 Q. You don't know Treasury's policies and
18 procedures?

19 A. No.

20 Q. Mr. Toone was asking you about files on
21 the staging server being available on the
22 Internet. What would someone need to do to get

Page 201

1 Q. How would someone in the public know
2 that Treasury had a staging server at UUNET?

3 MR. TOONE: Objection.

4 THE WITNESS: It should not know. That
5 was considered proprietary information. Any
6 information about our customers was tightly held.

7 MS. WILLIAMS: I'd like to mark this as
8 Exhibit 10.

9 (Wilson Exhibit No. 10 was
10 marked for
11 identification.)

12 BY MS. WILLIAMS:

13 Q. Have you seen this document before
14 Ms. Wilson?

15 A. Yes.

16 Q. What is it?

17 A. It's a snapshot of a trouble ticket
18 from the Remedy Trouble Ticket Database.

19 Q. Do you know how this document was
20 generated?

21 A. I myself accessed this ticket from the
22 Remedy database.

EXHIBIT K

**Cited Excerpts from the Deposition Transcript
of Bloomberg LP, by Darin Langone
(November 3, 2006)**

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS
(Boston Division)

-----X
UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

Civil Action
No. 05-10983

-against-

STEVEN E. NOTHERN,

Defendant.

-----X

VIDEOTAPED DEPOSITION OF DARIN LANGONE

New York, New York

Friday, November 3, 2006

Reported by:
DOROTHY H. LONDON, RPR

Page 2

November 3, 2006
1:09 p.m.

VIDEOTAPED DEPOSITION OF DARIN LANGONE, held at
the offices of Securities and Exchange Commission, 3
World Financial Center, New York, New York, pursuant
to 30(b)(6) Notice, before Dorothy H. London, a
Registered Professional Reporter and Notary Public
of the State of New York.

Page 4

INDEX
WITNESS EXAMINATION BY PAGE

DARIN LANGONE Ms. Williams 6
101

Mr. Toone 63

EXHIBITS

	DESCRIPTION	PAGE
1	Notice of Deposition and Subpoena for 30(b)(6) deposition from Bloomberg LP	10
2	Configuration files for Server N010	31
3	"A Survey of the NTP Network"	86

REQUEST FOR DOCUMENTS

PAGE	LINE
15	17

Page 3

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BY: CATHERINE MARTEN, ESQ.

ALSO PRESENT:

JUAN TORRES, VIDEOGRAPHER

Page 5

THE VIDEOGRAPHER: This is Tape No. 1 of
the videotaped deposition of Mr. Darin Langone in
the matter of the United States Securities and
Exchange Commission versus Steven Nothorn in the
United States District Court for the District of
Massachusetts.

This deposition is being held at the SEC
offices, 3 World Financial Center, New York, New
York on November 2, 2006 at approximately 1:09 p.m.

My name is Juan Torres, and I'm the legal video
specialist. The court reporter is Dorothy London.

Will counsel please introduce themselves
beginning with the party noticing this proceeding?

MS. WILLIAMS: Erica Williams for the
plaintiff, United States Securities and Exchange
Commission.

MR. TOONE: Robert Toone from Foley Hoag
in Boston for the defendant, Steven Nothorn.

MS. MARTEN: Catherine Marten, counsel to
Bloomberg LP.

THE VIDEOGRAPHER: Will the court reporter
please swear in the witness?

o0o

Page 30

1 is used is it gives all the computers in this
 2 particular grouping on a network the ability to keep
 3 time with one another. It's almost as if -- you
 4 know, we all wear watches. You know, some people's
 5 individual watches are fast. Some people's
 6 individual watches run slow. You know, the watch on
 7 your wrist might be easily equated to the hardware
 8 clock that's on your motherboard, so if you're going
 9 to interact, if you're a computer and you're going
 10 to interact with some other computers and then maybe
 11 a clock is a little slower or faster, you're going
 12 to have a difficult time doing these transactions.
 13 You know, I might go to you and say hey, you know,
 14 give me this and you give me that and I give you
 15 something else, and we look at our watch to try to
 16 synchronize, but there's differences.

17 But if somehow our watches were
 18 interconnected and the statefulness of time was
 19 maintained between two of them, we wouldn't have
 20 this difficulty, and that's probably why it is that
 21 NTP is utilized between systems on a network, and I
 22 think it's going to also get into why it is that
 23 there's differences between why a computer has a
 24 hardware clock and why if it does have a hardware
 25 clock, why it is that we need this NTP thing, as

Page 31

1 well.

2 Q. Without getting into too many technical
 3 details, how did NTP or how did NTP affect the
 4 accuracy of clocks on the TOMS system that Bloomberg
 5 maintained in 2001?

6 MR. TOONE: Objection.

7 Q. You can answer.

8 A. Well, NTP maintains the statefulness of
 9 the clocks on the TOMS system and every other system
 10 that we have by basically going out on to the
 11 Internet at that time and being in sync with some of
 12 the well known atomic clocks, GPS clocks that are
 13 out there for that specific purpose.

14 So it might have been a server for the
 15 TOMS system or any other server for that matter.
 16 It's really a generic thing. So that system would
 17 be up and running, and it would essentially be
 18 synchronizing its time with one of the well known
 19 clocks on the Internet.

20 Q. Are you familiar with the NTP
 21 configuration for Server N010?

22 A. Yes, I am.

23 MS. WILLIAMS: I'd like to have this
 24 marked as Exhibit 2.

25 (Langone Exhibit 2,

Page 32

1 Configuration files for Server
 2 N010, marked for identification,
 3 as of this date.)

4 BY MS. WILLIAMS:

5 Q. Mr. Langone, if you could take a minute
 6 and review Exhibit 2.

7 A. (Perusing.)

8 Q. Do you recognize what's been marked as
 9 Exhibit 2?

10 A. Yes, I do.

11 Q. What is it?

12 A. These are configuration files that would
 13 have been used at the time on these machines to --
 14 for the NTP process.

15 Q. When you say "these machines," what do you
 16 mean?

17 A. Oh, N010.

18 Q. If I could refer you to the document
 19 that's immediately behind Section 3(a), so that
 20 would be the fourth page of the exhibit.

21 A. Yes.

22 Q. Do you see that fourth page of the Exhibit
 23 2?

24 A. Yes.

25 Q. Yes, okay. What is -- have you seen this

Page 33

1 page before?

2 A. Yes, I have.

3 Q. What is this?

4 A. This is the configuration file that would
 5 have been on N010 for its NTP configuration.

6 Q. Is this a document that you printed?

7 A. Yes.

8 Q. Is it a true and correct copy of the
 9 document that you generated?

10 A. Yes, it is.

11 Q. At the top of the document under the --
 12 the sixth line down, I see a pound sign and then
 13 less than sign and at and some other information and
 14 then ntp.conf.proto and then some additional
 15 information. Do you see that line?

16 A. Yes, I do.

17 Q. What does that line mean?

18 A. Well, this denotes this file as being the
 19 NTP configuration prototype.

20 Q. When you say "NTP configuration
 21 prototype," what is that?

22 A. Well, when the system would have come from
 23 the vendor, the operating system, that is, it would
 24 have come with this file, and it probably would have
 25 been blank. So this serves as the prototype. It's

EXHIBIT L

**Memorandum of Activity concerning the
Treasury Office of Inspector General's
Interview of Jill Cetina
(November 7, 2001)**



MEMORANDUM OF ACTIVITY

Type of Activity: <input checked="" type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Contact <input type="checkbox"/> Records Review <input type="checkbox"/> Other (Describe):	Case Number: 2002-0104 Date: November 7, 2001 Time: 4:30 p.m.	Conducted by (Name, Title, and Signature): Michael Knorr, Investigator <i>Michael C. Knorr</i>
Subject of Activity: Jill Cetina International Economist Office of Foreign Exchange Operations Department of the Treasury Washington, DC		Location of Activity: Department of the Treasury Office of General Counsel 1500 Pennsylvania Avenue, NW Washington, DC

On the above date and time, the above listed subject was interviewed by attorneys Andrew Sporkin (202/942-4800) and Rosemary Filou (202/942-4768) of the Division of Enforcement, United States Securities and Exchange Commission (SEC) in coordination with Treasury, Office of General Counsel and the Office of Inspector General (OIG). Interviews of Treasury employees were conducted because of an allegation that someone may have prematurely released market sensitive information about the government's decision to suspend issuance of the Treasury 30-year bond, thus affecting trading activities in government securities.

The government's decision to suspend issuance of the 30-year bond was announced by Peter R. Fisher, Department of the Treasury, Under Secretary for Domestic Finance, during the quarterly funding meeting press conference held at Treasury between 9:00 a.m. and 9:25 a.m. on October 31, 2001. The announcement was embargoed for release until 10:00 a.m. Treasury, however, prematurely posted Fisher's statement on their Web site, where it appeared at 9:43 a.m.

Jill Cetina stated she has worked as an international economist for Treasury for the past four years. She provides market analysis to Treasury through contacts with bond traders and brokerage market strategists. She said on October 31, 2001, she was on duty at 5:30 a.m. working the "market room." She said she became aware of the decision to suspend sales of the 30-year bond approximately 30 minutes prior to the official announcement.

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Office of the Inspector General - Investigations
Department of the Treasury

MEMORANDUM OF ACTIVITY

Cetina was asked if she had received any earlier information of the elimination of the 30-year bond. She said she had heard speculation, on the part of bond market strategists, that it might be eliminated. Specifically, she said, a week or two prior to the announcement, she spoke with Drew Matus, a market strategist for Lehman Brothers Inc. in New York. She said that Matus predicted that Treasury would eliminate the 30-year bond. She thought he was "going out on a limb with that type of speculation."

Cetina said she was monitoring the bond market at the time the announcement on the 30-year bond was made. She said she was aware of the early Web site posting. She said she first noticed price increases on the long bond at 9:35 a.m. She said at 10:00 a.m., the time of the official announcement, there was a "big rally" in the bond price.

Cetina said when she first heard of the elimination of the 30-year bond, 30 minutes prior to the announcement, she was aware it was market sensitive information. She said she was aware of the embargo and added that she spoke to no one between 9:00 a.m. and 10:00 a.m. on October 31, concerning the suspension of sales of the 30-year bond.

Reviewed by: 

Date: 12/3/01

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Date Printed: 11/30/01
Form 01-09

Office of the Inspector General - Investigations
Department of the Treasury

EXHIBIT M

**Cited Excerpts from the Deposition Transcript
of Brian Collins
(May 12, 2006)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - - X

UNITED STATES SECURITIES AND :
EXCHANGE COMMISSION, :
Plaintiff, :
V. : Civil Action No.
STEVEN E. NOTHERN, : 05-10983 (NMG)
Defendant. :

- - - - - X

Washington, D.C.

Friday, May 12, 2006

Videotape Deposition of BRIAN COLLINS, a witness herein, called for examination by counsel for the Defendant in the above-entitled matter, pursuant to notice and subpoena, the witness being duly sworn by PENNY M. DEAN, a Notary Public in and for the District of Columbia, taken at the law offices of Foley Hoag, LLP, 1875 K Street, NW, Washington, D.C., at 10:44 a.m., Friday, May 12, 2006, and the proceedings being taken down by Stenotype by PENNY M. DEAN, RPR, and transcribed under her direction.

Page 2

1 APPEARANCES:

2
3 On behalf of the Plaintiff:4 ERICA Y. WILLIAMS, ESQ.
5 JOHN J. ROSSETTI, JR., ESQ.
6 U.S. Securities and Exchange Commission
7 100 F Street, NE
8 Washington, D.C. 20549-4010
9 (202) 551-4450
10 (202) 551-481911
12 On behalf of the Defendant:13 JOHN A. SHOPE, ESQ.
14 Foley Hoag, LLP
15 Seaport World Trade Center West
16 155 Seaport Boulevard
17 Boston, MA 02210-2600
18 (617) 832-100019
20 On behalf of the witness:21 JAMES RITTINGER, ESQ.
22 Satterlee, Stephens, Burke & Burke
23 230 Park Avenue
24 New York, NY 10169-0079
25 (212) 818-9200

Page 3

1
2 ALSO PRESENT:3 Rick Sanborn, Videographer
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Page 4

1 CONTENTS

2 WITNESS EXAMINATION BY COUNSEL FOR
3 BRIAN COLLINS PLAINTIFF DEFENDANT
4 By Mr. Shope 6
5 By Ms. Williams 72
6

7 E X H I B I T S

8 COLLINS EXHIBIT NO. PAGE NO.
9 1 Subpoena 10
10 2 Letter to Collins from SEC 59
11 3 Document containing page Bates numbered 62
12 SEC NOTH 00103667
13 4 Unidentified document 65
14 5 Press announcement hand out 65
15 6 Letter recounting call to Smith 66
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Page 5

1 THE VIDEOGRAPHER: In the United States
2 District Court for the District of Massachusetts, in
3 the matter of the United States Securities and
4 Exchange Commission versus Steven E. Northern -- no,
5 sorry, Nothern, civil action number 05-10983 (NMG).
6 This is the deposition of Brian Collins. The date is
7 May 12th, 2006. The location of the deposition is
8 the offices of Foley Hoag L.L.P., 1875 K Street,
9 Northwest, Washington, D.C.10 Noticing the deposition on behalf of the
11 defendant is John Shope, Esquire. Appearing on
12 behalf of the SEC are Erica Williams, Esquire, and
13 John Rossetti, Esquire. Appearing on behalf of the
14 witness is James Rittinger, Esquire.15 The officer before whom this videotaped
16 deposition is taken and sworn by is Penny Dean. The
17 video camera operator is Rick Sanborn, representing
18 Alderson Reporting Company, 1111 14th Street
19 Northwest, Washington, D.C. This videotaped
20 deposition commences at 10:44:54 a.m. Please swear
21 in the witness.

22 Whereupon,

23 BRIAN COLLINS,
24 residing at 2405 Dexter Avenue, Silver Spring,
25 Maryland, was called as a witness by counsel for the

Page 66

1 Q. I believe you testified before that you
2 recalled receiving a press announcement hand out on
3 October 31, 2001, correct?

4 A. Yes.

5 Q. As best you recall, is Exhibit 5 a copy of
6 what you received on that date?

7 A. It looks very much like it.
8 (Exhibit No. 6 was marked for
9 identification.)

10 BY MR. SHOPE:

11 Q. And just to save time, Mr. Collins, you're
12 welcome to read the entire Exhibit 6, but I'm going
13 to be asking you about the bottom paragraph on the
14 first page, and then the top of the second page. And
15 just let me know when you're ready. All set?

16 A. Yes.

17 Q. First of all, Exhibit 6 recounts a call
18 from you to Janice Smith. And the letter, which is
19 Exhibit 6, states that this occurred approximately
20 9:35 a.m., is that consistent with your own memory?

21 A. No.

22 Q. That your call to her was some time before
23 10 o'clock that day, correct?

24 A. Correct.

25 Q. So when you say it's not consistent with

Page 67

1 your memory, what's -- what are you disagreeing with?
2 This is specifically on the 9:35 a.m. piece, we'll
3 break it down into bits and pieces.

4 MR. RITTINGER: I object to the use of the
5 word or the form of disagreeing. I don't think it's
6 a disagreement, I think it's just a different
7 recollection.

8 BY MR. SHOPE:

9 Q. Okay, I'm asking -- basically, what I'm
10 asking for is just to get as best your memory I can.
11 And I recognize that this was five years ago, so I
12 understand that we're testing your memory to the
13 limit here. I just -- what I'm trying to get at is,
14 what's your best memory as to when it was that you
15 called Ms. Smith at Fannie Mae?

16 A. I would guess it would had to have been at
17 least about 10:45 or 10:50. I mean 9:45 to 9:50.

18 Q. And you're basing that on what?

19 A. I'm basing it on the fact that I walked
20 back from the Treasury Department, got into any
21 office, I think I as I mentioned I talked to
22 Mr. Muolo for at least a minute or something. I sat
23 down and tried to write something first, and it just
24 didn't have much pizzazz to it. I went over and
25 looked at the TV, CNBC. And then I put -- I figured

Page 68

1 I'd try to call somebody, see if I can get some
2 comment.

3 Q. By the way, was there a reason why it was
4 Fannie Mae in particular?

5 A. They are a big mortgage company.

6 Q. And I apologize if I asked you this
7 before, but had you heard anything about the possible
8 suspension of the long bond before October 31, 2001?

9 A. I can't recall.

10 Q. Now, there's reference here to a Lesia or
11 Lesia Bullock, media relations manager; do you see
12 that?

13 A. Um-hum, yes.

14 Q. Do you know Ms. Bullock?

15 A. I'm not sure, I don't think so.

16 Q. And so did you have any awareness that she
17 was at all privy to what you were saying on October
18 31, 2001?

19 A. No.

20 Q. Okay, okay. And I take it nobody from
21 Fannie Mae ever called you back with any kind of a
22 comment, right?

23 A. No.

24 Q. Did you make any notes of your -- the
25 message that you had left for Ms. Smith?

Page 69

1 A. No.

2 Q. Did you make any notes of your discussion
3 with Mr. -- with your executive editor?

4 A. No.

5 Q. Okay. And did you take any notes at the
6 press conference itself?

7 A. Geez, I don't remember. I don't think I
8 even got a chance to sit down.

9 Q. Was that because it was standing room only
10 in the room where the press conference was being
11 conducted?

12 A. I know I was in the back, that's for sure.

13 Q. So in other words, you came in late, you
14 were in the back, and at least there weren't any
15 chairs that were in close proximity to somebody
16 coming in at the back?

17 A. I just don't remember sitting down.

18 Q. But, I mean -- well, let me put it this
19 way, would it have been your preference to sit if
20 there had been an open chair that was readily
21 accessible?

22 MR. ROSSETTI: Objection.

23 THE WITNESS: I don't know. Usually I do
24 sit down at press conferences.

25 BY MR. SHOPE: